

statewatch

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THE "WAR ON TERRORISM" AND A PERMANENT "STATE OF EMERGENCY"

UK: Liberties and democracy at risk

Civil Contingencies Bill would give the government and state agencies draconian powers in any emergency

The draft Civil Contingencies Bill currently before parliament has been described in a *Guardian* editorial (20.6.03) as:

the greatest threat to civil liberty that any parliament is ever likely to consider

The parliamentary Joint Committee on the Bill concluded that:

In the wrong hands, it could be used to undermine or even remove legislation underpinning the British Constitution and infringe human rights

The *Guardian* and the Committee are rightly concerned about how the powers to be given to the state and government might be used at some distant, future, point. However, the Bill is itself indicative of how far the *current* government is prepared to go in re-modelling emergency powers to its liking - and of the depth of the now permanent "war on terrorism".

The Bill replaces the 1920 Emergency Powers Act which was adopted just after the First World War at a time of major political confrontations between trade unions and employers, working class organisations and those holding power and wealth. The purpose of the 1920 Act is the maintenance the "essentials of life" (like food, power, transport etc) for the people. The purpose of the current Bill is to protect the "essentials of life" for the people *and* to preserve the state, government and financial institutions. As the Joint Committee says in its report:

In protecting government, emergency powers could potentially be used against the civil population (emphasis in original)

In the Bill the power to make a proclamation of an "emergency" is given to the monarch (on the advice of government) but although parliament has to meet within seven days it is given no power to discuss and vote on the proclamation.

Under the 1920 Act all "Regulations" have to be put before parliament and passed by both the House of Commons and House of Lords. "Regulations" were expressly "not deemed to be statutory rules" and could be "added to, altered or revoked by resolution of both Houses of Parliament". Under the Bill Regulations will be made by statutory instruments which cannot be altered or amended, they can only be accepted or rejected. At

the government's discretion there may or not be a debate or even a vote. The procedure laid in 1920 was more democratic than that now being proposed by the government.

The scope of Regulations (Clause 21) are sweeping, unlimited, and truly draconian. For example, Clause 21.3 allows for Regulations to "prohibit" assemblies, "prohibit" travel, and "prohibit.. other specified activities" (undefined). New criminal offences can be "created" for "failing to comply" bringing up to three months in prison. And whereas the 1920 Act said no regulation could alter existing criminal procedures (Section 2.2), the new Bill is silent.

Parliament's Joint Committee on Human Rights concluded that emergency powers could be used against:

political protests, computer hacking, a campaign against banking practices, interference with the statutory functions of any person or body, an outbreak of a communicable disease, or protests against genetically modified crops, among many others.

And the effect of Clause 25 of the Bill, referring to Human Rights Act 1998, would mean no judicial remedy would be available. So broadly drawn is the definition of an "emergency", so great is the discretion given to Ministers (to make Regulations and give "directions"), and so lacking are any avenues for parliament or people to make informed interventions, that democracy could disappear overnight.

The Anti-Terrorism, Crime and Security Act 2001, and a swathe of EU measures and international agreements (instigated by the USA and supported by the UK government), signalled a new global era where the "war on terrorism" has replaced the "Cold War". Within this ideology the Civil Contingencies Bill is a logical step for those in power to take, one which people and parliaments are expected to passively accept as necessary.

The road to authoritarianism will not begin with the declaration of an emergency at some point in the future, but with the passing of this Bill. For if it is passed all the machinery of the state will immediately move to put in place contingency plans that can be implemented anywhere, anytime, and in a instant.

See analysis of the Bill on pages 14-15.

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GERMANY

1,170 Muslim homes raided

In December, on the very same day that "terrorist suspect" Abdelghani Mzoudi, who is being tried in Hamburg in relation to the 11 September attacks in the USA was released on bail for a lack of evidence, 5,500 police officers raided 1,170 Muslim homes. Those raided were alleged to be connected to the *Kalifatstaat* (Caliphate State) organisation, which was proscribed in 2001. Police officers refused to explain why they suspected that those arrested were part of the organisation.

Mzoudi released

On the day of the largest ever police raid in post-war Germany, the *Bundeskriminalamt* (Federal Crime Police Office) sent a fax to the Hamburg court which stated that they had no evidence of Mzoudi's involvement in the 11 September attacks. The "evidence" now suggests that only the three Hamburg-based suicide hijackers (Mohammed Atta, Marwan Alshehhi and Siad Jarrah) and Ramzi Binalshibh, the alleged al-Qaida liaison currently in US custody, had been involved. Mzoudi has been in custody for 14 months and standing trial for the last four months on 3,066 counts of manslaughter and membership of a terrorist organisation. The trial is continuing and the prosecution has appealed against his release.

The trial has been marked by police attempts to keep their sources secret, although it is commonly known that the incriminating evidence comes from the fourth member of the "Hamburg terrorist cell", Ramzi Binalshibh, who was arrested in Pakistan in September 2002. Binalshibh had shared a flat in Hamburg with Mohammed Atta, the suspected ringleader of the suicide hijackers. The US authorities and German *Bundeskriminalamt* are keeping the transcripts of the source's interrogations secret. However, as presiding judge Klaus Rühle's statement said:

The judges have many questions about the credibility of this information, but there is no possibility to verify Binalshibh's statements...We have no doubt that Ramzi Binalshibh is the witness and assume he was intensely interrogated about the attacks. There is a serious possibility that (Mzoudi) was kept away from all knowledge of the plot. If there is any doubt of his innocence he has to be released.

After the decision to release Mzoudi the lawyers of Mounir El Motassadeq, who was sentenced on 19 February for assisting murder in more than 3,000 cases and was jailed for 15 years, asked for his conviction to be quashed. His appeal is expected to be heard at the Supreme Court on 29 January next year.

A "terrorist" newspaper

The Interior Minister, Otto Schily, banned *Kalifatstaat* on grounds of its unconstitutionality in December 2001. Its leader (caliph) Metin Kaplan was based in Cologne until, in November 2000, he was jailed for four years for incitement to murder. He had demanded that "if a second caliph rises he should be beheaded" and one year later a religious rival was shot dead by unknown people. He was released in May this year and attempts to deport him to Turkey failed when the Cologne administrative court ruled that Turkey's treatment of the self-declared caliph would violate international obligations. The court thought that there was a possibility that Turkey, which has lodged an extradition request for Kaplan for treason, could force him to give statements under police duress. Turkey also has the death penalty.

The timing and scale of December's police raids in thirteen

of Germany's sixteen states is extraordinary. The homes raided were people who were said to support the *Kalifatstaat* organisation by subscribing to its newspaper *Beklenen Asr-I Saadet*, which is printed in Holland. The prosecution has initiated investigations into four former members for membership of a terrorist organisation. According to a prosecution spokeswoman, the raid in Braunschweig and Peine in Lower Saxony were intended to uncover evidence to support these allegations, but only one man was arrested for possession of a pistol and knives.

Criticisms of the police raids, which affected more than 3,000 people, have been voiced at the arbitrary targeting of Muslims. As Mzoudi's lawyer commented after his release: "This is what we've always said: friendship alone does not make you a suspect...". Subscription to a religious magazine, it has been pointed out, is not reason enough to justify an indiscriminate raid targeting a whole community, including families with children. "Experts" from the regional security service office in Stuttgart have said that the *Kalifatstaat* should not be overestimated, and that "there are other Islamic groupings in Germany that are much more dangerous".

However, the media coverage has concentrated on claims by the *Bundeskriminalamt* and the prosecution which portray the 1,170 "objects" (houses) that were searched as dangerous hot spots of criminal activity. It is unlikely that the results of the raids will receive much media attention because:

"after a short while this will vanish from the headlines and nobody will ask about the results...Only four people were closely scrutinised. Four people of 3,000-4,000 citizens searched!" Human Rights and Democracy (11.12.03)

Süddeutsche Zeitung 11.12.03; Stuttgerter Zeitung 11.12.03; taz 12.12.03; Human Dignity & Rights (www.hdr-org.de) 12.12.03.

<http://www.cbsnews.com/stories/2003/06/05/terror/main557166.shtml>

UK

"Al-Qaeda" terrorism charges dropped

Nine Algerians who were arrested in dawn raids in Scotland and England and charged under the Terrorism Act in December 2002 had all of the charges against them dropped in December 2003 when the Crown Office announced that it would be taking no further action against them. The men, who were accused of planning to carry out a Hogmanay attack on celebrations in Edinburgh, have demanded an official declaration of their innocence fearing that they face imprisonment or death if they return to Algeria. Their situation is similar to others detained under the Act for long periods before being released, deported or charged with minor criminal or immigration offences. The case has prompted the Scottish Human Rights Centre to call on the government to reconsider its use of the "flawed" Terrorism Act saying that it discriminated against ethnic minorities.

The men were arrested as part of the Lothian and Borders police force's Operation Scopia in high profile police raids in Edinburgh and London at the end of 2002. They were charged under section 57 of the Terrorism Act, with possessing "an article in circumstances which give rise to a reasonable suspicion that [it] is for a purpose connected with the commission, preparation or instigation of an act of terrorism." However, the evidence against them was non-existent. Within four months of the arrests the men were bailed and they have now been told that the charges have been dropped altogether. Operation Scopia has been described as "enormously expensive" and it is thought that much of the "intelligence" for the operation originated with MI5.

Rosemary McIlwhan, director of the Scottish Human Rights Centre said that: "It is interesting to see that the arrest of these

SPAIN

Aznar proclaims pre-emptive strike doctrine

In a speech given by Spanish prime minister José María Aznar at the *Escuela Superior de las Fuerzas Armadas* (ESFAS, the Armed Forces Superior Training Centre) on 20 October 2003 to the top ranking officers in the army, navy, air force and *Guardia Civil* (the Spanish paramilitary police force), Aznar stressed the need for "anticipatory actions" as part of "a new form of conceiving security". This new understanding of security would not have any "defined geographical limits", and Aznar dismisses the alternative, "returning to a sort of defensive autarky (despotic rule)" as "laughable" and "unthinkable", particularly after Spain has been able to "carve itself a niche" on the international scene, resulting in "new interests and more people to protect all over the world". Aznar's government was strongly supportive of the war waged by the USA and UK in Iraq, in spite of overwhelming opposition by the Spanish public. Aznar explained the changes that he proposes in security policy as a result of the "substantial changes in the world" that are taking place following the "balanced international situation in the 1990s, guaranteed by a single power". The two main characteristics of the present juncture are "the dominant position" of the USA, and the "appearance of the threat of international terrorism". The Spanish prime minister also backed an increase in funding for the armed forces, both at a national and EU level.

The prime minister argued that terrorism "will be a constant concern of the international agenda and the policies of free states", highlighting that "terrorism will not disappear easily nor quickly". The new situation, and the 11 September 2001 attacks on New York and Washington, mean that "a change of attitude is needed in order to be effective", in which "the logic of pre-emptive actions is just another part of the ... responsibility that is the duty of a ruler". Aznar accepted that it may sound as though he were pushing for a new security doctrine, but claimed that all he is doing is to "accept that terrorism has become a powerful element of insecurity at the start of the new century".

With regards to the USA, Aznar argued that the country "that suffered the worst and most brutal terrorist attack in history ... has a right to understanding and active solidarity from its allies". Furthermore, at present "there is no other practical or realistic alternative to the guarantee of security that the US represents". He dismissed the confrontational attitude by some allies towards the USA as "historical nonsense", noting that although Europe's relationship with the United States "is not in its best moment", in other cases, like Spain, "the Atlantic relationship could not be in a better condition".

Aznar stressed that "European common security has been waiting too long for our continent to take security more seriously", saying that some Europeans unreservedly feel that the defensive capacities of our countries should be improved, both individually and by the EU as a whole. He highlighted the Spanish armed forces' recent achievements, such as the ending of obligatory national service (and the armed forces' consequent professionalisation), the positive role undertaken in missions abroad, and the high level of support they receive from the public.

Finally, he argued that a transformation was necessary in a number of fields: technical innovation, management of resources and personnel, doctrines on the use of force and the structure of the armed forces. With regards to the doctrine on the use of force, he explained that while "peace missions have been the backbone" of the armed forces' activity in the 1990s, the fight

people was trumpeted and fanfared whereas when they were released it was all very quiet, and now we have had the charges dropped with next to no comment at all." She continued with the fundamental legal point:

They [the police] should make the investigation first and then arrest people, they shouldn't just arrest people and then investigate.

While Lothian and Borders police felt that they had "carried out a thorough and professional investigation", the solicitor for some of the men, Aamer Anwar, argued that the police and security services should be held accountable. He said:

I think the Crown Office, the police, the security forces and the Government in this country should be held accountable. They destroyed these men's lives. They brought forward a case in which clearly there was no evidence. We knew right from the start there was no evidence against them, but these men were accused of being members of al-Qaeda. The security services leaked to the press that there were plots to blow up Edinburgh... when they knew it wasn't factually correct, yet now they say no further proceedings. We want answers.

Anwar, who is demanding an inquiry into who sanctioned the arrests, said that the men did not know if they would be compensated. One of the men arrested, Salah Moullef, described how he was prevented from sleeping by questioning and detained without access to his wife and children. He said that his only "crime" was his religious beliefs. Another, Hakim Ziem, was concerned that his wrongful arrest left allegations of terrorism hanging over him. He said:

We cannot go back to our country to see our families, we cannot go to work because everyone knows our names, we cannot do anything, —our life has been destroyed.

The men are demanding answers about their detention. Their solicitor is appealing for the men to be granted asylum to spare them from the repercussions in Algeria. He said: "We will be pleading with the Government to grant them asylum - if they are deported they will face torture in their own country and there is even the possibility they will be executed."

Scotland Today 10.12.03; BBC News 24.12.02; 9, 10.12.03

Civil liberties - new material

Making the case for a human rights commission, Hannah Pearce. *Legal Action* October 2003, pp6-7. This piece examines the case for establishing a statutory human rights commission in the light of proposals made by the Joint Committee on Human Rights.

Why I can't wait for my identity card, David Aaronovitch. *Guardian* 23.9.03. The neocon journalist explains how carrying a "citizen's" card will liberate the bearer: "What I find sinister are the other systems - the inevitable alternative to identity cards - that dole out cards only to claimants, asylum-seekers, or to those with work permits. But if we all have a card - a citizen's card - then it puts us all on an equal footing as citizens."

Review: "A permanent state of terror?", Campaign Against Criminalising Communities (CAMPACC) in association with Index on Censorship, 2003, 170 pages, £4.50. From: Tony Callaghan, c/o Index on Censorship, 33 Islington High Street, London N1 9LH or e-mail: tony@indexoncensorship.org. These thirty commentaries on the effects of the so-called "war on terrorism" by activists, lawyers, academics and journalists present a sober view of the foreseeable future. The contributors include Noam Chomsky, John Pilger, Mark Thomas, Liz Fekete, Tony Benn, Gareth Peirce, Louise Christian, Liz Davies, Frances Webber, James Kelman, Harold Pinter and Conor Gearty. The book covers both the situation in the UK under the Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001 and that in third world countries bearing the brunt of state terror. Chomsky comments that it is only in "standing against repression, authority and illegitimate structures" that "we expand the domain of freedom". A highly recommended collection.

against terrorism (in its forms of mass destruction) means that a new understanding of security is required. Its main features are that "it must not distinguish so much between the interior and the exterior, [it must not have] defined geographical limits, and ... the effectiveness of this struggle leads to the possibility of undertaking actions of an anticipatory nature, albeit limited to specific cases". The principles by which it must be guided are "just aims, proportionality... and respect for non-combatants".

"La Política española de defensa en nuestro mundo", (Spanish Defence Policy in our World), J.M. Aznar, speech given in Madrid on 20.10.03; full-text in El País newspaper, 22.10.03.

EU

The road to "civilisation"?

Robert Cooper, is Director-General for External Affairs in the General Secretariat of the Council of the European Union in Brussels. He previously worked in the UK government's Cabinet Office as an adviser to Tony Blair, the Prime Minister. In April 2002 he wrote a controversial article, "Why we still need empires" in the *Observer* newspaper symbolically espousing the "barbarism" versus "civilisation" perspective.

In his new post in Brussels he returned to the fray in October with another article entitled "Civilise or die" in the *Guardian* (23.10.03). Nick Dearden, from *War on Want*, commented in a letter to the paper:

Should we not expect from an adviser to the EU's foreign policy chief Javier Solana a vision of a global economy that would overcome centuries of imperialism and lift the third world out of the poverty cycle?

In a later article, in the Brussels-based weekly *European Voice* (11.12.03), Cooper downplays the importance of solving world poverty. He says that "eliminating poverty and injustice will not eliminate terrorism" and that "of the two injustice may be the more important". To Cooper the problem is unstable states where "war breeds extremism, and out of extremism comes terrorism".

Any attack on "the state" is a terrorist attack on "legitimate authority" and "in this sense is an attack on civilisation". The idea that a people might seek to liberate themselves from an oppressive and authoritarian state is not on the agenda. "Terrorism must be fought by all means" including deception, pre-emptive actions, surveillance and eavesdropping.

"At times military force will be effective, as in Afghanistan", he writes. However, as Paul Flewers wrote to the *Guardian* from King's College, London, he "overlooks the fact that the US invasion failed to reconstruct the Afghan state". On Northern Ireland Cooper says that "terrorism has been reduced, perhaps even halted by using force within the limits of the law and by political negotiations". Such a view flies in the face of history, thirty years of conflict in Ireland were not resolved by force but - on the contrary - by a political settlement.

Of the struggles in Palestine and Sri Lanka he says that fanaticism and terrorism have "come out of hopeless wars" and such "unresolved conflicts are a source of danger to us, no matter where we live".

What makes "men (sic) free" is the imposition of "good laws and good armies (to quote Machiavelli)" an example of which is the European Union. The EU "can in some respects be likened to an empire" and the expansion to encompass central and eastern European countries "is a kind of regime change, but is it chosen, legitimate" representing the "spread of civilisation".

Could this, he asks, be a model for the Middle East with the USA/NATO imposing order and the EU providing aid and access to EU markets "traded against guarantees of good governance"?

Dominick Eustace, writing again to the *Guardian*, observed:

He has no conception of the terror felt by the powerless people who are bombarded. He sees no connection between "terrorism" and economic, physical and cultural subjugation... Cooper refers to "Islamic extremism", but does not make any mention of other extremism in the area, or indeed, of the US rightwing capitalist and Christian version.

IMMIGRATION

IRELAND

Right to remain for Irish citizen children and their parents

On 17 July 2003 Michael McDowell, Minister for Justice, Equality and Law Reform, announced that a backlog of 11,000 claims for residency by non-EU parents of Irish citizen children had been nullified. He issued four hundred notices of effective deportation with only 15 working days to appeal (see *Statewatch* vol 13 no 5). The Irish Human Rights Commission (IHRC) and the Coalition Against the Deportation of Irish Children (CADIC) have launched an urgent campaign against the proposed mass deportation of Irish citizens and their parents, arguing that it would violate the European Convention of Human Rights and Ireland's constitution.

The IHRC was established in July 2001 as a result of the of 1998 Good Friday Agreement which provided for the establishment of Human Rights Commissions in the Republic and in Northern Ireland to improve the protection of human rights across Ireland as a whole. It has recommended that the Irish government and Justice department make provision for free legal assistance and advice to people faced with possible deportation. It has also called on the government to reconsider its position in relation to non-national parents of Irish citizen children who had applied as parents of Irish citizen children for permission to remain in the State.

The IHRC further points out that Article 3 of the European Convention on Human Rights (torture, inhuman or degrading treatment) obliges the State to protect its own as well as other citizens by not sending them to countries (*non-refoulement*) where in this case especially harmful practices such as female genital mutilation, forced marriage or child labour prevail. Further, decisions should have regard to whether citizen children would be sent with their parents to situations of armed conflict or famine, or where their welfare or rights to education and healthcare would be in jeopardy.

The Irish Council for Civil Liberties and former United Nations High Commissioner for Human Rights, Mary Robinson, are supporting the campaign and organisations are now collecting as many signatories as possible for "a letter to be sent to the Minister calling on him to respect the rights of all Irish children equally and to put in place a fair policy".

Joanna McMinn, the director of the National Women's Council of Ireland said:

In the 1980s, Ireland abolished the term an 'ill-legitimate child'. Twenty years later, a new generation of Irish children are being treated as if they were 'ill-legitimate' citizens, again only because of the status of their parents.

The Coalition Against the Deportation of Irish Children is calling for support for the campaign. Individuals who wish to sign a petition should send their name and pledge to the letter to: cadic@ericom.net

Organisations that are signing up should inform the Irish Council for Civil Liberties: iccl@iol.ie. For updated information check <http://www.iccl.ie/minorities/news.html>.

The current organisations supporting the campaign include: CADIC (Coalition Against the Deportation of Irish Children), chaired by Ronit Lentin, Department of Sociology, TCD includes Amnesty Ireland (Irish Section), Akina Dada Wa Africa, the Children's Rights Alliance, Conference of Religious Of Ireland, the Free Legal Advice Centres, the Immigrant Council of Ireland, Integrating Ireland, the Irish Council for Civil Liberties, the Irish Refugee Council, the Jesuit Refugee Service, the Refugee Project of the Catholic Bishops, Refugee Information Service, Residents Against Racism, National Women's Council of Ireland and the Vincentian Refugee Centre. The Coalition has a website: http://www.integratingireland.ie/index.php?article_id=874§ion_id=0

NETHERLANDS

"Dover 58" trial reveals flawed investigation

The investigation and trial, after 58 undocumented Chinese migrants suffocated to death on 18 June 2000 on the journey between Zeebrugge and Dover, has raised many questions regarding the extent of police knowledge and involvement in the people-smuggling business.

The Dutch "Dover" trial started in Rotterdam on 19 April 2001 when nine people appeared in court, eight of whom were charged with being an accessory to manslaughter, human trafficking and membership of a criminal organisation, and one with forgery. The main suspects were jailed for nine years (Gursel O and Haci C) and seven years (Lammert N) while two of the defendants were acquitted. In June 2002, the High Court ruled on the mens' appeal: Gursel O received ten and a half years and Haci C and Lammert N five years imprisonment. The remaining accused received sentences of 22 months upwards.

On 28 May 2003, a related court case against Jing Ping C and seven other suspects began in Rotterdam. Seven men were charged with trafficking and membership of a criminal organisation while Jing Ping C was said to be responsible for human trafficking from China. According to the prosecution she had a monopoly on transport routes to the UK that allowed her to smuggle in several thousand people. On 29 June she was convicted of heading a criminal organisation and trafficking to the UK; she was acquitted of involvement in the Dover case. The other suspects received sentences ranging from six years to four months. Si Young L. was given a six year sentence for preparing the fatal Dover transportation and two other deliveries.

Jing Ping C was arrested in Rotterdam on 28 May 2002 as part of Operation Opaal, the investigation into the deaths of the Dover 58. She denied allegations that she is "Sister P", identified by the police and media as a ruthless criminal, unafraid of using violence against her employees and the people she smuggled, and was not charged with any acts of violence. She was accused of 25 offences of trafficking, including the Dover case, but few people from the Chinese community were prepared to give evidence against her.

The case against her was dependent on transcripts of 20,000 telephone conversations. Three of the conversations formed the basis of the prosecution's case. Firstly, a conversation on 19 March 2002 in which "Sister P" said that she suffers from nightmares and that while she did not kill people with her own hands she was responsible. Secondly, on 22 March 2002, when asked about problems in China she replied that "money is not a problem." Finally, on 9 April 2002, she said: "my boys are doing fine at the moment...Now there are 60 or 70 each month...". Lawyers for Jing Ping C argued that some of the interceptions were inadmissible; having been used in a previous case their reuse would violate interception regulations. The police claimed that they had only asked for translations of relevant passages relating

to a murder trial and not on trafficking.

The defence also questioned the reliability of the transcripts as the police had them translated from the southern Chinese dialect spoken by "Sister P" into Mandarin and then into Dutch. Further doubts were voiced about the identification of individuals heard on the tapes - the number of interceptions made the allocation of specific conversations far from accurate. Gerard van der Hardt Aberson, the lawyer for one of the suspects, argued that the core prosecution evidence - the telephone conversations - did not constitute evidence. Other evidence, derived from an earlier trial that collapsed, led Jing Ping C's lawyer to argue that the prosecution was using the old investigation to cover up the deficiencies of the current one.

Evidence implicating Jing Ping C was heard from an imprisoned Chinese trafficker Chun H, who was jailed for 12 years for murder in 1999. He had previously provided the police with family details of "Sister P" and her "Uncle C", who he accused of being managers of human trafficking at the start of the 1990s. He informed the police that "Sister P" was "...a very big snakehead" because she and her "uncle" controlled the routes from China to Europe.

In 1999 Chun H, and his girlfriend Lee Ah K, were jailed for their involvement in transporting 30 Chinese immigrants; Chun H. was also found guilty of murdering Min Z. Lee Ah K who was jailed for a year, became the girlfriend of Gursel O. the main suspect in the Dutch Dover trial, in October 1999. Although during the trial she described Sister P as the "godmother" behind the Dover shipment, her evidence was not used against Gursel O, who she is said to have introduced to the Chinese trafficking business. He had previously been involved in the transporting of Kurds to the UK, for which he had been placed under surveillance by the Rotterdam water police. While all of those tried for the Dover case were detained in the days following the fatal shipment, Lee Ah K. was not arrested despite police knowledge of her relationship with Gursel O.

In the aftermath of Dover, the surveillance of Gursel O raised suspicions of police involvement and the extent of their knowledge. The Rotterdam river police observation reports say that Gursel O had been under observation from 25 February until 16 June - just two days before the deaths. The surveillance operation was viewed by the defence as indicating that the shipment was a controlled delivery. Gursel O was not only known to the Dutch police, but also to the French and British police and had a history of trafficking going back to 1998 when he was arrested at Schipol airport, under a French extradition warrant, on charges of trafficking activities in the south of France. After his extradition he served a six-month prison sentence. In the same period Suffolk police had contacted the Dutch authorities over his suspected activities. More suspicion was aroused when parliamentary questions revealed an apparent unwillingness to stop Gursel O's activities, although this was attributed to a "miscommunication".

Lee Ah K's temporary immunity remains similarly unexplained. In December 2002 a detailed report demonstrated her relationship with Gursel O and said that she was a human trafficker. In parliament questions were raised about the police actions and demands were made for the release of the dossier on the case. The Minister of Justice, Benk Korthals, refused, claiming that Lee Ah K. was not a suspect in the Dover case. He claimed this despite the fact that she had been convicted for human trafficking in Holland in 1995 and that the police had tapped her telephone on this basis in 1998. The police contended that she had played a major role in the trafficking business because of the imprisonment of her ex-partner, Chun H in 1998, but it was not until December 2000, following a police raid on a house where the Dover 58 had stayed while in transit, that she was interrogated.

Two other aspects of the "Dover" trial were thought peculiar and pointed to a controlled delivery and the involvement of Dutch

police officers. The first was that three of the Chinese immigrants who died on the crossing to Dover possessed a piece of paper with the mobile phone number of a Dutch policeman, George van Stek. Stek is married to a Chinese woman and is the China "expert" of the Amsterdam police force. The second claim maintains that police officers were following the truck with the migrants on their way to the UK. This pursuit was broken off for an unknown reason.

Lawyers Weski and van der Hardt Abersson, representing Jing Ping C and the other accused, argued that the police knew about the Dover shipment on 18 June 2000. They found support for their claim in an internal police journal obtained accidentally from the Zwolle *Unit Mensenmokkel* which investigated the Dover case. In the journal van Stek evaluated the Amsterdam investigation one month before the fatal shipment, writing of a conversation with Rotterdam police force's South-East team. One line is of specific interest, a "Request to keep away from the Lady", which lawyers say refers to an instruction not to follow Sister P. Van Stek also ran a travel agency while off-duty and has refused to hand over details of his telephone contacts to the police.

Throughout the trial the prosecution said that although eight people had been arrested their place had been taken by others and the trafficking continued. They demanded the maximum sentence of ten years and eight months imprisonment. On 29 July the Rotterdam court convicted Jing Ping C and sentenced her to three years imprisonment. The prosecution has said that it will appeal against the lenient sentence. Legal observers, however, consider it unlikely that the evidence will stand up in the High Court, suggesting that the case against Jing Ping C will collapse.

Trouw, Het Parool, de Volkskrant, NRC handelsblad, Algemeen Dagblad, 16.1.02; 4, 7.6.02; 28, 29.8.02; 5, 6.9.02; 23, 29.11.02; 14, 26.3.03; 21.4.03; 23, 24.5.03; 4, 7, 11, 22, 27, 28, 30.6.2003

Immigration - in brief

■ **Spain: Deaths in the Strait:** The number of migrants who have died attempting to reach Spain in dinghies through the Strait of Gibraltar or the Canary Islands is already over one hundred. On 25 October, following the shipwreck of a dinghy in Rota on which around 50 migrants were travelling, 37 bodies were found. The rescue operation has been described as negligence, because over an hour passed from the time when an alert was received to when a rescue mission left. The prosecutor's office has opened an official investigation. To add insult to injury for the victims' families, the Interior Ministry has denied a visa to most of the relatives of the deceased, who wanted to travel to identify the bodies. On 10 November, eight more people drowned in another dinghy that was set to arrive in Motril, in the province of Granada.

■ **Italy: Migrants die attempting to reach Italy:** On 19 October 2003, a vessel was intercepted by the port authority in the island of Lampedusa to the southwest of Sicily. Fifteen people were rescued, and the dead bodies of 13 more were found. Italian interior minister Giuseppe Pisanu told parliament that the survivors claimed that they had began the crossing 19 days earlier from a Libyan port, with 85 people on board, all of whom originally came from Somalia. This means that 50 other passengers probably died during the crossing. Two days earlier another small vessel was intercepted heading for Lampedusa from Libya in which 25 persons were rescued. One body was found and the survivors claimed that six others had died, including three children. *Chamber of Deputies; report by the Interior Minister Giuseppe Pisanu on the tragic events in Lampedusa, 22.10.02.*

■ **Italy: Expulsions on charter flights:** In his statement to parliament on 22 October, on the migrant deaths in Lampedusa

days earlier (see above), interior minister Giuseppe Pisanu also gave an update on the struggle against illegal immigration. He stressed that in 2003 Italy has repatriated "four illegal immigrants found in Italy" for "every illegal immigrant who has disembarked". He said that the repatriations were not "deportations", but were carried out as a result of readmission agreements "with the countries of origin and transit", although it is not clear what difference this makes in terms of the act of removal. In 2002, expulsions from Italy included 26 charter flights that returned people to Albania, Nigeria, Sri Lanka, Egypt and Romania. *Chamber of Deputies; report by the Interior Minister Giuseppe Pisanu on the tragic events in Lampedusa, 22.10.02.*

■ **Spain/Morocco: Agreement against illegal immigration.** In Madrid on 19 November 2003, the Spanish and Moroccan interior ministers agreed to create a body for the coordination of the fight against illegal immigration which will meet on a monthly basis. At the same time as it was also decided to put into place joint mixed patrols to surveil common borders. On 9 December it was the turn of the head of the Spanish government, José María Aznar, to visit Morocco in order to re-launch a number of initiatives to combat illegal immigration in talks with the Moroccan government. These included the approval of the presence on Spanish territory of two liaison officers from Morocco who would be responsible for identifying unaccompanied Moroccan minors, for locating their families and ensuring that they ask to have them back.

■ **Spain: New Tenerife migrant detention centre.** At the end of 2003 a new detention centre will be opened in Tenerife with the capacity to hold 250 migrants. Built on land belonging to the Ministry of Defence, next to a military base, the building will be equipped with six metre high fences, movement sensors, floodlights and video cameras.

Immigration - new material

Asylum, immigration & nationality law update, Robert Sutherland. *SCOLAG Legal Journal* (Scottish legal Action Group) Issue 313 (November) 2003, pp.214-217. Review of significant court judgements in Scotland and England. Covers asylum, asylum support, criminal offences, human rights, immigration and procedure. Available from SCOLAG, 173 Crossloan Road, Glasgow G51 3QE, Tel. 0141 445 6451, www.scolag.org

Inmigración, racismo y xenofobia, Análisis de prensa abril, mayo, junio 2003, pp. 95, *Mugak, Centro de Documentación sobre racismo y xenofobia*, Peña y Goñi, 13-1, 20002 Donostia. A quarterly press review, that includes listings of newspaper articles that have appeared in the national and local press, analysis of the coverage, and a feature article on journalism and the treatment of immigration.

Análisis de prensa 2002. Inmigración, racismo y xenofobia, 2003, p.189. *Mugak, Centro de Documentación sobre racismo y xenofobia*. A press review for 2002 that gives a formal analysis of the presentation of news, sources of information and the content of articles that appeared in a selection of national and local newspapers. It includes research aimed at understanding and examining the role of the media in the interpretation and reproduction of images of "otherness", and in the creation of an ideological framework for interpreting events involving migrants. The role of elites, and their use of the media and power structures to develop modern racism, are also examined.

Análisis de la Reforma de la Ley de Extranjería, no 24, 3rd quarter 2003, p.59, 5 Euros. *Mugak, Centro de Documentación sobre racismo y xenofobia*. This issue takes an in-depth look at the reform of the Spanish immigration law, which is viewed as "a further turn of the screw in the increasing of the insecurity for several hundreds of thousands of migrants who ... live among us". It also looks at gender issues such as marital violence, the experiences of migrant women

working in the domestic help sector, and the treatment of migrant women in the press.

LAW

ITALY

Andreotti acquitted of murder

On 30 October 2003, Italy's highest appeal court, the Court of Cassation, acquitted former prime minister Giulio Andreotti and Mafia boss Gaetano Badalamenti of the murder of journalist Mino Pecorelli (see *Statewatch* vol 12 no 6). An appeal court in Perugia had passed 24-year sentences on the two defendants, after they had been acquitted in the first trial, held in the same city. The appeal court was deemed to have passed a guilty verdict in the absence of evidence that Andreotti had an interest in the journalist's murder, and that he had ordered the murder. Thus, the Court of Cassation argued that the original acquittal should have been confirmed by the appeal court. The prosecution was held to have "acted legitimately" by bringing charges against Andreotti, but the presentation of the latter's motive for ordering the murder was abstract (to prevent Pecorelli from publishing damaging information, such as former prime minister Aldo Moro's memoirs during his kidnapping and murder by the Red Brigades) and unsubstantiated, due to the fact that the documents in question were never found.

Secondly, the Court of Cassation also felt that the testimony given by Tommaso Buscetta, who claimed that Andreotti had ordered the murder, "is not supported by any probatory element with regards to the identification of the time, the form, the means and the passive subjects (intermediaries, lower level instigators or the material perpetrators)" of Andreotti having given the order to kill Pecorelli. Buscetta, who is now deceased, was the first high profile Mafia "supergrass", and cooperated closely with anti-Mafia judge Giovanni Falcone (killed by the Mafia in 1991), who sought to investigate the links between the Mafia and political figures. Buscetta's testimony was also considered unreliable in trials that were held in Palermo in which Andreotti was accused and acquitted of "external participation in the Mafia". In spite of the acquittals and subsequent criticism of investigating magistrates, among others by Berlusconi, the court in Palermo noted that there were anomalous and worrying relations between Italy's leading politician, who was prime minister on seven occasions, and important figures who were part of the criminal organisation, including politicians Salvo Lima and Vito Ciancimino and the brothers Nino and Ignazio Salvo.

Misteri d'Italia newsletter, n.80, 6 December 2003, www.misteriditalia.it

ITALY

Former defence minister found guilty of corruption

On 22 November 2003 Cesare Previti, a close advisor of Prime Minister, Silvio Berlusconi, and MP for the *Forza Italia* party who was also his lawyer, and defence minister in Berlusconi's first government in 1994, was found guilty of corruption and sentenced to five years in prison in a court in Milan. He was found to have corrupted judges in Rome through the payment of \$434,000. His co-defendants Attilio Pacifico, a lawyer, and Renato Squillante, the former head of the Rome *giudici per le investigazioni preliminari* (judges for preliminary investigations), were also found guilty; Pacifico faces a four-year sentence, whereas Squillante received an eight-year sentence. Prosecutors had asked for 11-year sentences to be passed for the

more serious charges of corruption to influence a trial, in relation to the failed acquisition of the SME state food corporation by the CIR group that was headed by De Benedetti in 1986, after a court annulled an agreement that had been previously reached. The defendants were cleared of influencing the trial, and Judge Vittorio Metta was consequently acquitted.

The verdict brought to a close a trial that has lasted for over three years, amid repeated efforts by Previti to have it moved from Milan, where he argued that the judges were biased. A law was even passed by the government to allow defendants to have a trial moved on grounds of "legitimate suspicion" that judges may be partial, but Previti's application was denied. Previti's lawyer used the same argument to explain the verdict, arguing that "In the appeal hearing, we hope to find judges who are more impartial". Previti had already been found guilty (pending appeal) and sentenced to an 11-year prison term on 29 April 2003, in connection with the *IMI-SIR/Lodo Mondadori* case, also related to the alleged corruption of judges in a trial concerning the control of the publishing group, *Mondadori*. According to the plaintiffs, the De Benedetti group, "the control of the *Mondadori* group, which was firmly in the hands of CIR in 1990, was taken away from it following a sentence that has today been recognised to have been brought about by corruption". His co-defendants, who were also found guilty, again included Squillante (8 years, 6 months), Pacifico (11 years), and Metta (13 years), as well as Felice Rovelli, Giovanni Acampora and Primarosa Battistelli, who received custodial sentences of between four and a half and six years.

Berlusconi was a defendant in the early stages of both cases, and in the latter the prosecution argued that Previti was corrupting judges on his behalf. However, proceedings against him were first separated from those against the other defendants, and later suspended in compliance with the tailor-made law 140/2003 (the so-called *Lodo Schifani*) that was passed on 20 June 2003 to prevent top state officials (the president, prime minister, the leaders of the two legislative chambers (the parliament and senate), and the president of the constitutional court) from undergoing judicial proceedings while they are in office (see *Statewatch news online* August 2003). The constitutional court is expected to reach a decision in December as to whether the law violates the Italian Constitution.

Corriere della Sera 22.11.03; *La sentenza IMI-SIR/Mondadori* (*The IMI-SIR/Mondadori sentence*), 29.4.03; *Repubblica* 29.4.03.

SPAIN

Criminal code modification pressurises Basque institutions

On 31 October 2003, the Council of Ministers decided to appeal to the Constitutional Court against the plan presented the previous week by the Basque government for discussion in the Parliament of the Basque Country, (see *Statewatch* vol 12 no 5). The Spanish government's decision is an attempt to prevent discussion of the proposals and their possible approval by the Basque chamber. The Constitutional Court will reach a decision on whether to allow the appeal at the end of December or in January 2004. If it is admitted it will paralyse debate in the Basque parliament, possibly for years.

As part of the strategy of pressurising Basque institutions (see *Statewatch* vol 13 no 3/4), the parliamentary steering group that failed to carry out a Supreme Court order to dissolve the parliamentary group, *Sozialista Abertzaleak*, was called to give testimony in early December in the Basque Country's *Tribunal Superior de Justicia* (Superior Court of Justice). It was facing a charge of contempt. The latest move was through a reform of the criminal code (*Código Penal*) (that the government is set to approve before the end of the year), that would criminalise a

public authority that calls a referendum without being authorised to do so. The responsible individual will risk being sentenced to several years imprisonment. All of the opposition parties, including the Socialist party, expressed objections both to the measure itself, and to the way in which it has been presented as part of a *Ley de Acompañamiento* (Supplementary Law) that has nothing to do with the *Código Penal*. They are considering an appeal against this reform on grounds of unconstitutionality.

Law - new material

Goldsmith's advice on legality of war must be published, David Pannick. *Times* 4.11.03. Last March the Attorney-General, Lord Goldsmith, told parliament that he had advised Tony Blair that the invasion of Iraq was legal. Goldsmith's opinion was widely questioned by international jurists, but any debate was impeded by the government's refusal to publish more than the briefest of summaries. Pannick concludes: "If the Government persists in refusing to publish Lord Goldsmith's advice, the decision should be recognised for what it is: a political calculation that seeks to impede informed discussion on an issue of fundamental public importance..."

Views on equity monitoring the Criminal Justice system. Findings from the Northern Ireland Omnibus Survey, S. Morgan & R. Frell. *Research & Statistical Bulletin* 6 (November) 2003, pp.12. On monitoring the treatment of people who come into contact with the Northern Ireland criminal justice system.

The Freedom of Information (Scotland) Act 2002, Derek O'Carroll. *Scolag Legal Journal* October 2003, pp182-183. A guide to the FoI (Scotland) and its implications for public authorities.

A Supreme Court for the United Kingdom? Chris Himsworth. *Scolag Legal Journal* October 2003, pp178-179. Reviews the key issues raised by government proposals for a UK Supreme Court.

MILITARY

GERMANY

Restructuring for a more "professional" force

At first sight, the recent moves by the Defence Minister, Peter Struck, to downsize the armed forces might seem to indicate the decreasing importance of Germany's military. The opposite is in fact the case. Whilst numerous garrisons in Germany are being closed, resulting in many job losses, the army is being prepared for a more "professional" deployment for "international crisis management". This move entails the abolition of compulsory conscription (*Statewatch*, vol 12 no 2) in order to gain a stronger position in NATO and the future EU Rapid Reaction Force. The aim is for the German military to become an "important player at the international level".

On 27 November, Struck stated that until 2010 the number of garrisons and other "logistical facilities" will be reduced nationwide from 109 to 59. Twenty garrisons have already been ordered to close and 12 have been drastically reduced in size. Around 5,000 jobs, both soldiers and civilian employees, will be cut, with some federal states suffering many more job losses than others. This has led to protests by some regional parliaments. The armed forces will become "professional" and will be deployable without conscripts - in deployments such as Kosovo, conscripts were criticised as being more of a hindrance than a help in "real" war situations. Although Struck still claims he personally does not want to abolish compulsory conscription (because he thinks that "society will be alienated from the army")

his governing Social Democrat Party (*Sozialdemokratische Partei Deutschlands*) is preparing a conference for the end of 2004 on the pros and cons of conscription, hinting at its abolition in the near future.

The move towards increasing Germany's military role is supported by the current red-green coalition with its recent announcement of a draft law on deployment outside of Germany which changes the rules on (*Bundestag* (Lower House) decisions on "small deployments" and extensions of existing deployments, making them easier, (i.e. quicker and less problematic). According to the draft regulation, the president of the *Bundestag* will pass on requests for deployment to the relevant committees and if no request for parliamentary involvement has been made within seven days, the matter is taken as agreed. In cases of "immanent danger" no parliamentary consultation is necessary, but it has to be sought retrospectively and if rejected can lead to the return of the deployed forces. However, past cases have shown that illegal deployments (i.e. failure by governments to consult parliaments) have not led to repercussions or the withdrawal of soldiers from crisis areas. In 1993, the federal army undertook its first post-second-world-war military activity abroad in Yugoslavia, a government decision which was later declared unconstitutional by the Federal Constitutional Court for failing to seek a parliamentary vote, although the deployment itself was retrospectively deemed legal through a 1994 ruling.

In 1993 Germany's army was sent abroad a second time, to Somalia (again the Court reprimanded the government for failing to consult parliament). In 1997 German armed forces evacuated 116 people from Tirana, Albania's capital city. Here the Prime Minister argued the situation had been so urgent it had been impossible to consult parliament (see *Statewatch* vol 11 no 6). German soldiers are currently taking part in the International Security Assistance Force (ISAF, Afghanistan, Uzbekistan: around 1,820), KFOR (Kosovo Force: around 3,350), SFOR (Stabilization Force - Bosnia and Herzegovina: around 1,320), CONCORDIA (Macedonia: around 40), NATO headquarters (Skopje, Macedonia: 12), UNOMIG (United Nations Mission in Georgia: 11), Enduring Freedom (Afghanistan, Horn of Africa/Gulf of Oman, Kenya: around 300). Altogether, around 7,300 soldiers are participating in deployments abroad (31 October 2003), not including special "elite" forces such as the KSK in their covert involvement in crisis areas such as Afghanistan. The annual military budget has increased accordingly: whilst in 1995 foreign deployment cost 131m euro, it increased to 554m euro in 1999 and 1.5 billion euro in 2002.

At the end of 2001, the Conservative leadership had proposed a change in the constitution to put the decision on armed forces activities abroad firmly in the hands of the government, (i.e. with the chancellor to enable a more "active" German army). Struck has proposed creating a special parliamentary commission with the power to make such decisions but coalition fractions are still resistant to the idea of excluding the whole parliament. The current draft proposal is planned to come into law early in 2004.

Süddeutsche Zeitung 28.11.03, 1.12.03;

EU

Deal over defence force

Britain, France and Germany have finally reached a deal on an autonomous planning capacity for the EU defence force that can count on support from Washington. Under the agreement the EU will have a planning cell but it will not be called officially a standing headquarters. However the main option for planning European military operations will be to site them in national headquarters in the UK, France, Germany, Italy or Greece, an arrangement long accepted by Britain and of which the recent

EU operation Artemis in the Congo is an example. But where no headquarters is nominated, the EU planning cell in Avenue Cortenberg in Brussels could be made operational. This would have "responsibility for generating the capacity to plan and run the operation," according to the agreement. In a concession to the British government the agreement says it "would not be a standing HQ", and would be up and running for specific operations only. A British proposal to set up a permanent EU presence at Nato's military planning headquarters at Mons in Brussels has also been accepted. In this compromise the plans to set up a rival headquarters for Nato in Tervuren have been cancelled. The matter was finally settled at the Foreign Ministers Council in Naples at end of November and will be implemented as soon as possible in 2004.

Independent 12.12.03 (Stephen Castle); Spiegel 12.12.03

Military - in brief

■ **EU/Italy: European gendarmerie:** Italian defence officials have said that the EU and Italy will be forming a European *gendarmerie* - an out-of-area police force - that could have its first unit ready in 2004. Representatives of 22 European countries attended a joint exercise in November in Italy with the eventual aim of creating a military police force designed to maintain public security in trouble spots, particularly in the wake of an overseas EU military intervention. The Rome exercise was first planned by the Carabinieri as an all-Italian affair but was later opened to other European police forces and the Police Unit of the EU council. *Defense News 8.11.03 (Tom Kingdon)*

POLICING

GERMANY

Officers acquitted on charges of life threatening injuries

On 21 November 2003, a Berlin court acquitted two police officers of charges of police violence, reversing an earlier decision which found one officer guilty of "physical assault in office", sentencing them to seven months probation. The victim of the assault - which left him with permanent injuries - is considering an appeal. Human rights groups that monitored the trial were shocked at the acquittal in a case that was backed by hard medical evidence and witness statements. They have argued that it sets a bad example for other victims of official misconduct, discouraging them from seeking legal recourse.

The background to this case was a minor incident. Levent Ö. was giving a party at his house when a neighbour, irritated by the music, called the police. By the time four officers arrived, the music had subsided but they still entered Levent Ö.'s flat, without asking his permission. They ignored Levent's request to see their search warrant. During their search they saw two marijuana plants, which they cut down, although Levent had explained to them that they were THC-free (which, it later turned out, they were). Levent demanded the identification number of the head of the operation. In response they asked him to come down to their car so they could issue a confiscation report. Witnesses said that the police pushed Levent hard to the ground and started kicking and beating him.

In its 2003 annual report, *Amnesty International* describes the incident as follows:

The man alleged that after he was handcuffed, one police officer grabbed hold of his neck and violently threw him to the ground,

causing him to hit his face on the ground after which two police officers kicked him as he lay on the ground. The man suffered a deep gash to his nose and lower forehead, which required an operation, and multiple bruising to his arms and neck.

Levent Ö. was admitted to hospital with an open nasal bone fracture which was classified as life threatening by doctors who ordered an emergency operation. In addition to the open wound between his eyes, the hospital documented strangulation marks around his neck and bruising over his entire body. As a result of his injuries, Levent Ö. was left with restricted movement in one arm, leaving him unable to work as a cameraman. He has lost his sense of smell because the nerves at the bridge of his nose failed to heal properly. The brutality evoked memories of Levent Ö.'s past as a torture victim - he had been tortured and politically persecuted in Turkey. He found himself traumatised by the incident.

Levent initiated legal proceedings against the police and in December 2002, the Berlin Tiergarten District Court found Bernd O., the responsible head of operations, guilty. He was given a seven-month suspended prison sentence. Immediately after the incident, the police, turned the allegations around and accused Levent Ö. of obstructing an officer in the performance of his duties, slander and bodily injury but it lost its case in the same court in June 2001.

Both parties appealed against the decisions, Bernd O. against his sentence and Levent Ö. because only one of the officers involved was called to account. For unknown reasons and without precedent, the 72nd division for criminal matters of the regional court in Berlin decided to merge the two trials, with the result that the victim was summoned simultaneously, as a joint plaintiff against two police officers, and as an accused on grounds of obstruction and slander. Levent Ö. not only found it traumatic to be accused whilst trying to seek justice, but also found himself in the legally impossible situation of having to give evidence on details of the incident whilst having to worry about his statements possibly being used against him.

One of the legal issues that arises from calling the same person as an accused and as a witness are that statements by the accused are given less importance than that of a witness in that witnesses are obliged to speak the truth, whereas the accused has the right to silence. Further, the opportunity for Levent Ö., to challenge the perpetrators is drastically reduced in such a procedure. It is described by the Green party spokesman and former Berlin justice minister, Wolfgang Wieland, as "to date an unknown phenomena". He argues that Levent's two roles are as incompatible as a "split personality" and commented that he found it "incredible that something like this is being accepted as a procedure based on the legal order". Wolfgang Kaleck, spokesman for the lawyer's association *Republikanischer Anwälten- und Anwälteverein* calls it an "absurd trial construction". Beate Böhler, Levent's Ö.'s defence lawyer lodged a complaint against the trial merger with the Berlin Supreme Court, but it was dismissed.

The district court spokesman Björn Retzlaff thought that the different roles of the accused and the plaintiff were merely a "formality". The parties, he said, had acted "against each other" which led to "the same facts of the case" because Levent Ö. and the police officers were involved in the same "scrap". This position clearly downplays the injuries suffered by Levent Ö. and apports blame to both parties alike, despite the fact that the officers were not injured.

The first trial day and the final ruling also reflected this view. Judge Le Viseur negatively replied to Levent Ö.'s request to question the officers with the comment "There are no witnesses in this courtroom today, there are only defendants". Le Viseur justified the officer's acquittal with the argument that there were "unresolvable contradictions", although it is not clear where contradictions arose, with dozens of witnesses and a

detailed hospital report. His colleague from the district court had already found that the officer's actions had been "brutal", given that the chief of operations had kicked the victim in the face whilst he was handcuffed and injured. Judge Le Viseur called into doubt the integrity of witnesses. One witness was so offended by the court's treatment that he said he would reconsider if he would ever give evidence again. The judge reprimanded him, warning that he had to follow his citizen's duties.

If this kind of trial procedure were to become a norm, one commentator argued, the future will hold even more obstacles for victims of police violence to seek legal recourse than it does already.

Jungle World 29.10.03; *junge welt* 30.10.03; *indymedia Germany* <http://germany.indymedia.org/2003/11/66961.shtml>. Amnesty International report 2003 on Germany: <http://web.amnesty.org/report2003/Deu-summary-eng>

Policing - new material

Commentary on the Northern Ireland Policing Board. *Committee on the Administration of Justice*, November 2003, pp.56. The CAJ has worked on policing issues since its foundation in 1981 and this commentary is the first in a series that it intends to publish on policing institutions in Northern Ireland. The work is divided into two sections. The first is an overview of the Policing Board, with an emphasis on the issues of transparency and accountability. The second part addresses particular case studies which illustrate how the Board's approach to accountability and transparency have affected important policing issues including operational accountability, CS spray, the Omagh bomb investigation, training, sectarian crime and district policing partnerships. CAJ, 45/47 Donegall Street, Belfast BT1 2BR, Tel. 44 (028) 9096 1122.

"Al-Qa'ida is far more sophisticated than any of us expected" Sir John Stevens & Jason Bennetto. *Independent* 21.7.03. Bennetto interviews the Commissioner of the Metropolitan police on violent crime, Al-Qa'ida and the murder of human-rights solicitor, Pat Finucane, by loyalist paramilitaries in collusion with FRU. On violent crime Stevens complains about unfair press coverage. On Al-Qa'ida he warns that the organisation "is far more sophisticated than any of us expected", although fails to justify any of Scotland Yard's "scare stories" - presumably on grounds of "security". On the Pat Finucane murder he says: "it's taken 14 years and its been extremely harrowing on occasion, but we have got there".

When the face fits, John Dean. *Police Review* 26.9.03. pp26-27. Discusses the second ACPO Working Party for Facial Identification national conference, held in Manchester in September. The article cites Richard Neave, "an expert with Barclays Security Bureau", who believes that "facial mapping should be regarded as a science" - a modern day phrenology, perhaps? The article expresses "doubts" about the technique of morphing which "makes it possible to take different faces and blend them together to create a single, more realistic face." Professor Vicki Bruce of University of Edinburgh says: "Morphing images are good for leads or if police want to put images out on *Crimewatch*, but not to take into court."

PRISONS

UK

Record prison population

The UK prison population currently stands at a record high of 74,389, a rise of 1,680 in a year. A further 1,420 places are being opened at seven jails next year and new prisons will open at Ashford, Middlesex and Peterborough in 2005. The government

clearly intends to carry on with its policy of encouraging the courts to hand out more custodial sentences, despite opposition from prison reformers, prison governors and some senior Prison Service officials. The Home Office future investment strategy includes plans for the purchase of two sites to accommodate "super size" jails housing prison populations of 1,500 and 600-space jails on sites next to HMP Belmarsh in south east London and at Ashworth, Merseyside. In total, the Home Office intends to bid for Treasury funding for a further 5,400 new prison places. Harry Fletcher, assistant general secretary of NAPO has said "The case for additional funding to pay for community penalties for those serving short sentences is overwhelming, but in the absence of any Treasury support, a moratorium of prison-building seems essential to free the necessary funds." *Independent* 17.11.03

UK

Prison suicides - the body count increases

The governor of HMP Durham, where four inmates have committed suicide in the last six months, has stated that vulnerable remand prisoners should not be sent there. An inquiry has begun following the suicide by hanging of 30-year old Maurice Cowan at HMP Durham. According to the Prison Reform Trust more prisoners (6) committed suicide at HMP Durham in the last year than at any other jail. Governor Mike Newell has said "We need to make sure that we don't remand into custody highly vulnerable people who could be better accommodated through bail hostels."

There have been 14 deaths of women in custody since 1 January 2003.

Twenty five young people aged between 15 and 17 have committed suicide in custody since 1990. The UK jails more teenagers and young adults than any other western European country. As the body count increases, the Prison Service appears determined to carry on as before. A recent report by Ann Owers, the Chief Inspector of Prisons, into HMP YOI Castington, reported that most young prisoners there spent more than 22 hours a day in cells, with virtually no access to vocational or skills training. In her report, Owers identified clear weaknesses in child protection arrangements and a need for better communication and co-ordination in relation to the identification and management of young prisoners at risk.

BBC News 8.10.03; *Report of Chief Inspector of Prisons-HMP YOI Castington*; *Times* 12.11.03; *BBC News Online* 8.12.03; *Miscarriages of Justice UK* 8.12.03.

UK

The "Scrubs" - beatings, mock executions and racist threats

The Prison Service has accepted that prison officers at Wormwood Scrubs have subjected prisoners to sustained beatings, mock executions, death threats, choking and racist abuse. It concedes that 14 prisoners were seriously assaulted by officers at the Scrubs, and that the prisoners suffered at least 122 separate instances of assault between 1995 and 1999. The admissions were made in the process of settling the prisoners' claims. The Prison Service has also settled a further 32 cases without admitting the prisoners' claims. A total of £1.7 million has been paid out so far.

The Prison Service has admitted that prison officers tried to cover up assaults by bringing false disciplinary charges against inmates and that senior officials in the jail and in management

failed to investigate the assaults properly. Inmates who tried to complain were threatened and beaten to keep them silent. One officer assaulted an inmate who had been to raise his concerns with the chaplain, jumping on his ankle while asking "Will the chaplain help you now?" Prison Service documents name 14 officers as being involved in the assaults and one who took part in the cover-up. Four of these are still at the Scrubs, a further seven at other jails. Two have been promoted. Details of the incidents revealed include:-

- An Irish inmate being pinned to a bed and choked as eight officers beat him, with one shouting for the prisoner to call him "English master".

- Prisoners being psychologically tortured by officers by threatening to hang them and bragging that they had done this to other inmates without being caught. As an example, from the Prison Service documents, cited by the *Guardian*: "The officer... proceeded to choke the claimant with one hand while prodding him with the other. At the same time, the officer (said) "You terrorist scum, you'd better plead guilty to assaulting me, because if you don't we're going to fucking hang you, we hang shit like you. Another officer then said Get the fucking sheet. The officers left the cell."

- One inmate was attacked in August and September 1995 and the Prison Service admits that he was assaulted by a "welcoming committee" of six prison officers who forced him to strip for a squat search then kicked him in the testicles; he was denied exercise and assaulted again after complaining to a junior governor, and was at this point told by officers:

We will kill you. We will get away with it. Don't think we haven't done it before.

Subsequently, he was beaten into unconsciousness by up to eight officers, and a prison officer stopped a call from the inmate to his family when he began to talk of injuries suffered to his legs and ribs. On September 16 1995 the inmate, having seen a prison doctor about earlier injuries, was assaulted by up to five officers, who beat him then pinned him to the bed, made a noose from his bed sheet, fixed it to the cell bars then lifted the inmate up, gagged him with a towel, and placed the noose around his neck.

One of the out-of-court settlements concerns an allegation of rape after a beating by prison staff, wherein the claimant, in his statement, says he was then held on the floor. He could feel his buttocks being forced open. He felt an object being forced into his anus...a lubricated penis". A second inmate, currently suing the Prison Service, alleges that he was beaten and sexually assaulted by a different officer, who pushed a baton into his anus.

Wormwood Scrubs was at the centre of a police investigation which began in 1998 (see *Statewatch* vol 8 no 2, 3/4, 5 and vol 9 no 3/4). Three officers were jailed for violence against prisoners. The investigation clearly did not act as a deterrent. At least four of the assaults admitted by the Prison Service took place after detectives had arrived at the jail in March 1998. Warnings from two chief inspectors of prisons, Sir Stephen Tumin in 1994, and Sir David Ramsbotham in 1996 also went unheeded. In 1998 the prison's board of visitors wrote to the then Home Secretary, Jack Straw, warning of persistent fears of brutality. No action was taken. Daniel Machover, the solicitor who worked to uncover much of the brutality at Wormwood Scrubs, has said: "It's unthinkable that this level of torture can happen to so many prisoners over such a length of time without there being a public inquiry into how a prison can get this bad."

The violence inflicted on prisoners at the Scrubs should not been seen as unique. The 1969 Parkhurst riot followed efforts by prisoners to raise through official channels, and through a round-robin letter: "the brutality that is occurring at this prison, and to protest about the inhuman treatment and beatings-up that Timothy Noonan is suffering". (Quoted from Prisoners Protest Letter, reprinted in Brian Stratton "Who Guards The Guards?" PROP 1973). The *Sunday Times* Insight team reported that

"Parkhurst guards were using the gauntlet...the screws would line the corridor leading from the cell blocks to the recreation rooms and beat prisoners filing down the corridor with riot sticks."

Allegations of brutality by prison officers followed the wave of sit-down protests by prisoners in 1972 and have been raised by prisoners at prisons such as Albany, Parkhurst, Wandsworth, Brixton, Dartmoor, Full Sutton and many more. As Steve Box observed in 1983, prisons are little to do with crime control:

Rather, they are more concerned to instil discipline, directly and indirectly, on those people who are no longer controlled by the soft-discipline machine of work (S Box "Power, Crime and Mystification" Tavistock 1983)

Any inquiry into the violence at Wormwood Scrubs ought to be minded to re-examine the death of Stephen Smith there in August 1974. Stephen Smith was brought from the Segregation unit at Wormwood Scrubs onto C wing in the first week of August 1974. Many prisoners reported him being assaulted by prison officers in that week and of him being beaten severely in the segregation cell on C wing by a group of prison officers on the following Saturday. He was then taken to the segregation unit again and reports from prisoners suggest he was beaten again. At 6.30 the same day he was found hanged. The prisoners asked for an independent inquiry. The Home Office claimed Smith committed suicide. The jury at his inquest were unconvinced. They returned an open verdict. Almost 30 years on, how much has changed?

Guardian 11 & 12.12.03.

Prisons - in brief

■ **Germany: RAF member pardoned after 24 years in prison.** On 10 December, Rolf Clemens Wagner, who was arrested on 19 November 1979 in Zurich, was released from prison. He was pardoned by the *Bundespräsident* Johannes Rau (head of the German state with representative functions and no party allegiance) and Peer Steinbrück (*Sozialdemokratische Partei Deutschlands*, SPD), Minister of the regional state North-Rhine Westphalia. Wagner, who was a member of the militant left-wing organisation *Rote Armee Fraktion* (Red Army Fraction) had been sentenced by German and Swiss authorities on several offences of attempted murder, murder, kidnapping and robbery. The murder charge related to the kidnapping and murder of the then president of the German employers' federation (*Arbeitgeberpräsident*) Hanns Martin Schleyer. It is the most controversial aspect of his conviction, as it could never be established who shot Schleyer, leaving Wagner's conviction for murder based on suspicion. Wagner is 59-years old and has served the longest prison sentence of all RAF prisoners so far. Remaining prisoners are Christian Klar (imprisoned since 1982), Brigitte Mohnhaupt (also imprisoned since 1982), Eva Haule (in prison since 1986) and Birgit Hogeferd (in prison since 1992). There is a campaign calling for the release of these prisoners. Information on the issue of political prisoners in Germany can be obtained from the legal support association *Rote Hilfe e.V.* (www.rote-hilfe.de). *Süddeutsche Zeitung* 24.11.03, 4.12.03.

Prisons - new material

Review: Prisonsgate. The Shocking state of Britain's prisons and the need for Visionary Change, David Ramsbotham. The Free Press 2003 (ISBN 0-7432-3884-2) £20.00. David Ramsbotham is a former Chief Inspector of Prisons. His book serves in part to document the appalling conditions and inhuman treatment of prisoners he encountered during his time in post. Ramsbotham details his first visit, to HMP Holloway, where he and his team encountered vulnerable prisoners locked in their cells for most of the day, dirt, rats, cockroaches, prisoners in chains in

the Mother and Baby Unit, and a Governor who could not account for the whereabouts of four 15-year old girls held at the jail. Holloway, he states, set him on his task of letting the public know of what was done behind closed doors in the prison system in their name, and to "so disgust them that they would not tolerate such treatment of fellow citizens - male or female in their name." *Prisongate* examines the horrors encountered across the prison estate, from the Close Supervision Centre at Woodhill to the resettlement prisons intended to facilitate offenders' reintegration into the community. Ramsbotham identifies the enemies of change as a "triumvirate: ministers, Home Office officials, and the hierarchy of the Prison Service", and explores in detail their role in the Blantyre House scandal. This saw one of the country's best-performing prisons raided on the basis of spurious drugs allegations, and a progressive governor, Eoin MacLennan Murray removed from his post by Area Manager Tom Murtagh, a harsh, security-based regime put in place. Abolitionists and consistent penal reformers will disagree with Ramsbotham as to the extent prisons can be made to "work", but *Prisongate* is worth reading as the testimony of an honourable man seeking to make accountable an appalling system. The wider question it ought to provoke is as to why it is that, with a prison population at record levels, prison conditions and prisoners' rights remain the concern primarily of the "great and good" such as Ramsbotham and Sir Stephen Tumin, while being almost completely ignored by the left.

RACISM & FASCISM

GERMANY

Draft law to ban headscarves in school

In Germany, for the first time, strong criticism is being levelled against advocates of banning headscarves, which are often seen as religious symbols of the oppression of women as well as violating (western) democratic principles, in German schools. The criticism follows a decision by the state cabinet of Baden-Württemberg to allow the regional government to pass a law preventing teachers from "wear[ing] symbols that could also be seen as a political statement" (head of Baden-Württemberg regional state Erwin Teufel, CDU). Bavaria has announced it will follow suit. The new paragraph 38 of the regional Education Act, drawn up by a former judge with the Federal Constitutional Court, states that a teacher's behaviour that gives the impression that he or she stood against human dignity, equality and basic rights, should be forbidden.

Baden-Württemberg's Christian Democrat cultural minister Annette Schavan believes that wearing a headscarf "undoubtedly" constitutes such behaviour because the scarf is seen "also as a symbol of cultural self-isolation (*Abgrenzung*) and as part of the history of the oppression of women". The Conservative Schavan said during the presentation of the draft law in regional parliament, that the headscarf was less of a religious symbol than a sign of "political oppression practised within Islam" (*Spiegel online* 28.10.03). The same could not be said for Christian or Jewish symbols, she said, without further explaining her questionable statement. Christian symbols will therefore explicitly remain legal and the law states that nuns, for example, will be able to continue teaching in their vocational outfits.

With this proposal, which is expected to enter into law by the end of this year, the regional states were reacting to an earlier decision by the Federal Constitutional Court of 24 September which declared the banning of headscarves illegal. The ban had been practised in Baden-Württemberg without a legal basis and this had been challenged by a headscarf-wearing teacher.

However, the latest ruling also laid down that each regional state has the freedom to create a law which would stop teachers from wearing religious symbols.

The former deputy president of the Federal Constitutional Court, Ernst Gottfried Mahrenholz (Christian Democrat) strongly criticised the Baden-Württemberg decision, pointing out that it deliberately misinterprets the Constitutional Court decision. He explains that although the Constitutional Court allowed regional states to ban the expression of religious symbols, it also laid down that the law could not discriminate between different religious convictions (ie. it was constitutional only) "if members of different religions are treated equally". The regional government "completely" failed to consider this because it did not fit their "concept".

Mahrenholz also criticised Baden-Württemberg's use of the concept of "aptitude" for people in public office. The German Basic Law (Article 33 Para 2) lays down that every German citizen has "equal access to every office according to his aptitude, ability and qualifications". Mahrenholz points out that the term aptitude is a "very personal term" which could not be reduced - as is done by those who interpret the headscarf as unconstitutional - as symbolic of fundamentalism. It is not those wearing the headscarf that are the problem, he argues, but those that advocate unconstitutional fundamentalism. Hence,

Such a legally enshrined suspicion towards a particular group of people, without any evidence of the same within the group, is the political discrimination of this group, for which I do not see any parallels in German legislation.

Alongside Mahrenholz, women from the political and cultural spectrum have stated their opposition to the ban and have called for an objective debate. The 780 signatories to the statement include members of the Green party, the former head of the German state Rita Süßmuth (Christian Democrat) and actresses Renan Demirkan and Katja Riemann. They argue that the existing aptitude test, which each teacher has to pass before being allowed into office, was adequate to detect those with extremist views. The campaign spokeswoman argues that the ban creates "enemy images" and isolates Muslim women. Barbara John, the Berlin council member responsible for foreigners in the city, said that a ban would violate women's right to self-determination. The Green MP Marie-Luise Beck pointed out that "What is on your head is not decisive, but what's in your head". It is likely that the law will be tested before the Constitutional Court in the future.

While countries such as the UK and Sweden currently have a more open attitude towards Islamic dress codes - in the UK public sector workers, such as teachers and female police officers can wear a headscarf at work - France is also planning to introduce a ban on headscarves after a specially constituted commission told the government in December that legislation was essential to defend the secular nature of the state. However, the author Marjane Satrapi, who wrote a widely-acclaimed memoir of growing up in Iran during the Islamic revolution, has argued that young women who have been expelled from school for wearing a veil "should have the freedom to choose". She asks: "...if tomorrow we take off the veil, will the problems of which it is a symbol be solved? Will these women suddenly become equal and emancipated? The answer is no."

Süddeutsche Zeitung 25.11.03, 2.12.03; <http://www.tagesschau.de> 11.11.03

SPAIN

13-year sentence for Pacheco killing

On 29 October 2003, ten days after a jury reached a unanimous verdict finding two bouncers, James Anglada and Mariano

Romero, and a security guard, Antonio Fernández Quincoces, guilty of the unintentional killing of Wilson Pacheco, a judge in Barcelona sentenced the defendants to 13-year prison sentences.

On 27 January 2002, the Ecuadorian Pacheco was thrown into the water by James Anglada after he was chased and beaten by the three men in the *Maremagnum*, a complex of bars, restaurants and shopping areas on the Barcelona pier. The incident started when Pacheco was refused entrance to a bar and an argument ensued.

The jury saw video footage made available by the port authority and by some bars that have security cameras, that showed Pacheco throw something at one of the bouncers as he left. A chase ensued and he was caught by the three men, who beat him violently using their truncheons although he was considerably smaller than them, and kicking him in the face when he lay on the floor. James Anglada subsequently threw Pacheco into the water, and he drowned. Quincoces said that "I'm not going to jump into the water and wet my mobile for a *suraca* (term used to refer insultingly to South Americans)" although the aggravating circumstance of racism was not admitted, as the refusal of entry to the bar was deemed to have been motivated by Pacheco's drunkenness.

The judge in the trial found that although they did not intend to kill Pacheco, they were aware that there was a high possibility that he would die once he was thrown into the water. They were also deemed to have abused of their positions of authority.

El País, 12, 20, 29.10.03.

ITALY

Fini disowns fascism bringing turmoil to party

During his first visit to Israel on 23-24 November 2003, Gianfranco Fini, the deputy prime minister and leader of *Alleanza Nazionale* (AN, National Alliance), disowned fascism, claiming that it was an expression of "absolute evil", and denounced the racist laws that were imposed under fascism. He was also critical of the *Repubblica Sociale di Salò*, the puppet state that collaborated with the Nazis in the deportation of Jews towards the end of the Second World War after Mussolini's fall from power, and of anyone who "failed to help save innocent lives". He also claimed that he had changed his mind about Benito Mussolini, who he had referred to as the "greatest statesman in the twentieth century" in the past. It is a further stage in the effort by Fini to detach the party, now part of the ruling government coalition, from its fascist heritage after the cosmetic changes that were decided in Fiuggi on 27 January 1995. The party was previously known as the *Movimento Sociale Italiano* (MSI, Italian Social Movement), and was the direct descendant of the *Repubblica Sociale di Salò*, an avowedly fascist party under the leadership of Giorgio Almirante.

Fini's statements sparked controversy in his party, showing the fascist sympathies that persist within its ranks, despite its supposed evolution. Mussolini's niece Alessandra, who recently ran for mayor in Naples for AN, left the party in protest and seems set to establish a new party, with the backing of the leaders of smaller far-right parties that include Roberto Fiore's *Forza Nuova*, Adriano Tilgher's *Fronte Sociale Nazionale* and Luca Romagnoli's *Movimento Sociale Fiamma Tricolore*. Following Fini's statements, she claimed that "an incompatibility and prejudice have been sanctioned", which "are not in relation to my political beliefs, but with the surname that I carry".

Corriere della Sera 27.11.03; *Repubblica* 24.11, 25.11, 29.11, 1.12, 3.12, 18.12.03.

Racism & fascism - in brief

■ **Spain: Racism escalates in El Ejido:** The situation in El Ejido, the city in the province of Almería that is notorious for the many attacks on migrants that took place three years ago, has deteriorated recently. Migrants, mainly from Maghreb countries, are facing systematic assaults at the hands of groups of fascist gangs carrying chains and baseball bats or throwing stones. Around 20 victims have been taken to hospital over the last few months due to beatings that they received. After several months of inactivity, on 8 November 2003 the *Guardia Civil* (the Spanish paramilitary police force) detained three youths who were said to be responsible for the attacks.

■ **UK: BNP reinstates Tyndall as infighting escalates:** As the far-right British National Party gears up for local and European elections next June their founder and former leader, John Tyndall, has been reinstated as a member of the organisation. Tyndall was expelled in August (see *Statewatch* vol. 13 no 5) after a disciplinary hearing accused him of "subversion", "disruption" and slandering members of the party leadership. Tyndall says the expulsion was rescinded after discussions between legal representatives representing both parties, only for new charges to be brought against him. These have also been dismissed. According to Tyndall, who has ridiculed the attempts to expel him in his journal *Spearhead*, the current BNP leader, Nick Griffin and another key activist Tony Lecomber intend to "hound" him out of the party "one way or another". Lecomber has a criminal conviction for bombing the premises of a left opposition party in south London and is known among anti-fascists as "the mad bomber".

Racism & fascism - new material

Making an impact, Imran Khan. *Index on Censorship* vol 32 no 4 (October) 2003, pp. 62-66. Considers how the determination of Stephen Lawrence's family "changed the perceptions of British society and exposed the racism at the heart of the country's most powerful institution", the police. Khan compares the experiences of the family with those of the parents of Zahid Mubarek, who was murdered in his prison cell by a racist, and finds disturbing post-MacPherson parallels.

SECURITY & INTELLIGENCE

Security - new material

Iraqi Weapons of Mass Destruction - Intelligence and Assessments. *Intelligence and Security Committee* September 2003, Cm 5972 (£10.50), pp.57. The ISC is the oversight committee examining the expenditure, administration and policy of the UK's three intelligence services MI5, MI6 and GCHQ. It was the government's chosen vehicle to investigate their spurious claims concerning Saddam Hussain's weapons of mass destruction - the explicit justification for the invasion of Iraq. The report concludes that "Ministers did not mislead Parliament".

Spain: Al Jazeera journalist released on medical grounds: Tayseer Alouni, the 56-year-old Al Jazeera journalist arrested on 11 September 2003 on suspicion of being part of Al Qaida, was released on bail (6,000 Euros) on 23 October 2003 on medical grounds, "for humanitarian reasons due to the existence of a serious risk for his health". *El País*, 24.10.2003

A Wilderness of Mirrors, Philip Knightley. *Independent on Sunday* 5.10.03. The author Philip Knightley dissects the abject failure of the British (and US) intelligence services to predict that Iraq had no viable weapons of mass destruction (wmd).

The Civil Contingencies Bill - Britain's Patriot Act

Cities could be sealed off, travel bans introduced and all telecommunications cut off. Protests could be banned and new offences created by government decree. Democracy could be replaced by authoritarian rule

The government has published a draft Civil Contingencies Bill which would repeal the Emergency Powers Acts of 1920 and 1964, the Emergency Powers Act (Northern Ireland) 1926, the Civil Defence Act 1948 and the Civil Protection in Peacetime Act 1986. The main Act being replaced is the 1920 Emergency Powers Act (EPA 1920).

The Bill

The scope of the Bill goes well beyond that of the 1920 Act which is concerned solely with:

the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life

The new Bill does include the "essentials of life" for the population (Art 17.1.a) but massively extends the scope under Article 17.1 to also include:

(c) the political, administrative or economic stability of the United Kingdom or of a Part or region or (d) the security of the United Kingdom or a Part or region

Article 17.1.c. is defined in Article 17.4 as covering the "activities of Her Majesty's government", "the performance of public functions" and "the activities of banks and other financial institutions".

The Bill has two Parts, Part 1 covers "local arrangements for civil protection" and Part 2 is an entirely new proposal which would protect the state, government, financial companies in times of crisis or emergency.

The scope of Regulations and orders may concern a specified area (eg: geographical, such as a region or city) and the event or situation triggering an emergency: "*may occur or be inside or outside England and Wales*". Scotland and Northern Ireland would be required to adopt a similar measures.

Part 1: Local arrangements for civil protection

The meaning of an "emergency" is defined in Part 1 as an "event" or "situation" presenting a "serious threat" to: "human welfare" (1.1.a), the environment (1.1.b), the "political, administrative or economic stability of a place" (1.1.c) or "the security of a place" (1.1.d). "Human welfare" is defined to cover most aspects covered in the 1920 EPA but is extended to "electronic or other systems of communication" and "educational or other essential services". A Minister can by order lay duties and functions on those listed in Part 1 Schedule 1, known as "Category 1 Responders". These are: all county councils, district councils, London boroughs, City of London, Welsh county and borough councils plus police Chief Constables, fire services, National Health Trusts, ambulance services and the Environment Agency. "Category 2 Responders" cover the supply of electricity, gas and water, railways, airports, harbours and telecommunications services.

Common definitions in Part 1 and 2

A "threat to political, administrative or economic stability" is defined in 1.4., "if, in particular, it causes or may cause disruption of": (a) the activities of Her Majesty's government, (b) the performance of public functions, (c) the activities of banks or other financial institutions. The use of the term "in particular" suggest that what follows is only illustrative and not exclusive. The term "disruption" is a much lower standard than that in clause 1 which says an emergency must present a "serious threat" (similarly the term "threat" rather than "serious threat" is used in

relation to "human welfare" (1.2) and the environment (1.3).

A "public function" (1.4.b) covers all state and government functions set out in law and those "holding office under the Crown" (eg: the police and military). The power to make "regulations" and "orders" (defining roles, powers and obligations) is vested in a government Minister by means of "statutory instruments" (13.1) (Statutory Instruments Act 1948).

Part 2: Emergency powers

Part 2 is the most contentious part of the Bill (though many of the concepts are similar to those used in Part 1). It covers the whole of the UK.

An "emergency" is defined as a situation presenting a "serious threat" but clause 17.1.a refers to "the welfare of all or part of the population" rather than to "human welfare". Again the term "threat" rather than "serious threat" is used in defining "welfare" (17.2) and "threat" of "disruption" for "political, administrative or economic stability".

An "emergency" concerning a "serious threat" to "the security of the UK or a Part or region" (17.1.d) is later defined as a "threat" to security posed by: "(a) war or armed conflict, and (b) terrorism, within the meaning given by section 1 of the Terrorism Act 2000". *The inclusion of S.1 of the Terrorism Act 2000 is a major extension in the concept of emergency powers.* This Act stands alone for use in everyday life quite outside of "emergency" situations and the idea that at a stroke the full weight of emergency powers could be invoked is quite unacceptable.

The power to declare that an "emergency" has or is about to occur is given to the hereditary monarch, the Queen, who can issue a "Royal Proclamation". The "proclamation" must state the "nature of the emergency" and the parts of the UK affected (clause 18). A new departure also allows "the Secretary of State" (which can be any Secretary of State) to "by order declare" an "emergency" if waiting for the monarch would lead to a "serious delay" (clause 19).

Having declared an "emergency," the power to make new Regulations is also given to the hereditary monarch (clause 20) - with Regulations being made law through "Orders in Council" - a royal prerogative powers (powers that were never democratised, like the making of international treaties). The process is that the government draws up a Regulation and the Privy Council (Ministers and ex-Ministers) nods through an "Order in Council" without debate which then becomes part of the law of the land (clause 20.1). Under clause 20.2.b. any government minister can make Regulations if there is no time for the Privy Council to meet. The power to make Regulations extends to their amendment or revocation (20.4.a).

Scope of the Regulations

The scope of Regulations (clause 21) is breath-takingly - the monarch/Privy Council can make Regulations in relation to the declared "emergency" and:

make any provision which the person making the regulation thinks necessary for the purpose (set out in the proclamation of emergency) (21.b).

Clause 21.2 lists twelve areas defined as "human welfare", however, this clause also includes: "protecting or restoring activities of Her Majesty's government" and "protecting or restoring the performance of public functions".

Clause 21.2 says that Regulations under this heading can be

made for: "any kind that could be made by Act of Parliament or by the exercise of the Royal Prerogative"

Clause 21.2 contains the most glaring examples of where Regulations could affect and remove freedoms and liberties. Regulations could confer on a government Minister or "other specified person" a "discretionary function" and the power "to give directions or orders (whether written or oral)" (21.3.a).

Clause 21.3. allows for Regulations to be made in order to:

"(f) prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times;

(g) prohibit, or enable the prohibition of, travel at specified times;

(h) prohibit, or enable the prohibition of, other specified activities;

(i) create an offence of: (i) failing to comply with a provision of the regulations; (ii) failing to comply with a direction or order given or made under the regulations; (iii) obstructing a person in the performance of a function under or by virtue of the regulations"

The effect of 21.3.f-i. could be to ban the right to demonstrate and the right of free movement and "other specified activities". These powers would not just ban protest and travel but authorise the enforcement of the bans and introduce new criminal offences (see 21.4.d) to counter any dissent.

Some restrictions, taken from the 1920 EPA are preserved under 21.4. Regulations could not be made forcing people to undertake "military or industrial service" (21.4.a) or to prohibit "a strike or other industrial action" (21.4.b) - though how the latter can be reconciled with 21.3.f (banning assemblies) is not at all clear and may mean workers can strike but not demonstrate (assemble) or come together in solidarity.

Under 21.4.d new offences can be created allowing for imprisonment for up to three months or a fine.

The EPA 1920 provided in Section 2.2 that regulations must not alter any existing procedure in criminal cases - this is not in the new Bill.

Clause 22 requires the government to appoint Regional and Emergency Coordinators whose role will be to "facilitate coordination of activities under the regulations" under the "direction of" the government.

Clause 23 says that the proclamation of the "emergency" can last for 30 days but it can be renewed indefinitely.

Clause 24 covers "Parliamentary scrutiny" and says that parliament must be recalled if it is not sitting. The power of parliament when it is recalled is not defined. Clause 24.6 says the government has to put Regulations before parliament "as soon as is reasonably practical". 24.7 says Regulations would lapse unless approved by parliament within seven days. However, the term "approved" by parliament is subject to Clause 27 on Procedure which says Regulations made under Clause 21 will be made by statutory instrument - statutory instruments can be "approved" by either a "negative" (where the Regulation would simply pass into law unless a large number of MPs insist on a debate) or "affirmative" vote.

Clause 25 says that for the "purposes of the Human Rights Act 1998" regulations under section 21 "shall be treated as if it were an Act of Parliament" (see below).

Report of the Joint Committee on the draft Bill

The Joint House of Commons and House of Lords Committee on the Bill has produced a lengthy report. In its Introduction the Committee is particularly concerned about Part 2 and wants to:

ensure that the Bill does not provide any exploitable opportunity to misuse emergency powers and potentially, in a worst case scenario, allow for the dismantling of democracy

The Joint Committee on Human Rights had observed in its report on the Bill that the term "threat" could include:

political protests, computer hacking, a campaign against banking practices, interference with the statutory functions of any person or

body, an outbreak of a communicable disease, or protests against genetically modified crops, among many others.

The Bill is "an enabling Bill under which regulations could be made which do breach such [human] rights". In particular, the Committee on the Bill agreed with the Joint Committee on Human Rights in opposing Clause 25 which would:

if enacted, give rise to a significant risk that regulations could be made which would violate, or authorise a violation of Convention rights, without any judicial remedy being available for a victim of the violation.

The report says that the list of possible "constitutional issues is extensive" and that:

Clause 21.3.j. allows regulations to disapply any Act of Parliament. In the wrong hands, this could be used to remove all past legislation which makes up the statutory patchwork of the British Constitution

The Committee believes that a list of twenty-two fundamental constitutional laws should be included in the Bill which could not be amended or removed (eg: the Magna Carta 1297 and the Bill of Rights 1688).

The form of parliamentary approval set out in clause 27 is that set out for statutory instruments (SIs) for secondary legislation. Broadly there are two procedures which are usually laid down in the parent Act: negative resolution procedure and affirmative resolution procedure.

Negative procedure means that the instrument is published in the daily "Order Paper" of parliament and unless it is annulled it becomes law within 40 days. Any member of parliament can put down a motion to annul an SI but in the vast majority of cases no time is set aside for it. Only when a large number of MPs sign a motion is there any chance even for a debate. The affirmative procedure, which is less common, means that both the Commons and the Lords have to pass a motion approving the measure.

Most crucially, SIs cannot be amended or adapted by parliament. Here again the current government has removed one of the safeguards in the EPA 1920 - Section 2.4 of this Act allowed for regulations to be altered or rejected by parliament.

In short it is a procedure intended for the quick implementation of usually uncontentious measure, with minimal parliamentary input. It is a highly inappropriate procedure for the adoption of contentious measures in a democracy.

The Committee wants the term "human welfare" applied to both Parts of the Bill. They note that the scope of the Bill is significantly wider than providing the "essentials of life" under the EPA 1920 and comment that:

We cannot envisage the use of potentially draconian powers if there was no demonstrable threat to human welfare.. [we need] to ensure that the use of emergency powers would be limited to protecting the welfare of the population, rather than the welfare of the state

The Committee says that the broad definition of a threat to "political, administrative or economic stability" could be used by any government to protect itself and that: "In protecting government, emergency powers could potentially be used against the civil population" (emphasis in original). Their concern is that this enabling Bill could be a hostage to fortune and be used by a future government "against future generations" to counter a "threat to its own existence". The Committee recommends that the Bill "should only cover those threats to human welfare caused by the disruption to essential services".

The report says that the government's intention to "cover the full spectrum of current and future events and situations" could lead to laws open to misuse and conclude that if unforeseen events occur then any amendment:

should be enacted through proper parliamentary procedures, not left to the discretion of the government of the day

A longer version of this article will be published on Statewatch News online with the text of the Bill, Committee reports, commentaries and background reading material.

UK: Anti-terrorist stop & searches double official figures

Terrorism legislation sees increase in checks but fewer arrests as Muslim communities are targeted-

A study by *Statewatch* of the figures produced by the Home Office in December 2003 shows that:

1. The number of stops and searches as part of anti-terrorist operations is **more than double the official figures, 71,100 not 32,100.**

2. A large number of police forces are recording anti-terrorist stop and searches under the section 60 of the Criminal Justice and Public Order Act 1994 instead of section 44.1 and 44.2 of the Terrorism Act 2000 thus disguising the real extent of stop and searches under anti-terrorist provisions.

3. **The percentage of arrests resulting from stop and searches under the Terrorism Act 2000 was only 1.18%** which compares unfavourably with 13% for stop and searches under the Police and Criminal Evidence Act 1984 (895,300 people were stop and searched of whom 114,300 were arrested in 2002/03).

4. The Home Office admits that that for those arrested as a result of these stop and search:

"the majority of which were not in connection with terrorism".

5. Nearly 70,000 people were stop and searched who had committed no offence whatsoever.

6. The low arrest rate and the large number of people stopped and searched suggests that these powers are being widely and arbitrarily used to little effect.

Tony Bunyan, *Statewatch* editor, comments:

The consequences of these extraordinary figures needs to be spelt out. They will lead to a deterioration of police community relations within the Muslim community and a decline in key intelligence. There is ample historical evidence that indiscriminate searches may encourage more young men to become involved in their cause. The lessons from 30 years of conflict in Ireland have still to be learnt.

Searches of pedestrians, vehicles and occupants under sections 44(1) and 44(2) of the Terrorism Act 2000[1] and resultant arrests - England and Wales

Year	Total searches	Resultant arrests
1995 (from 1.4.95)	6	-
1996	40,500	581
1996/97	43,700	486
1997/98	15,400	316
1998/99	3,300	33
1999/00	1,900	18
2000/01	6,400	45
2001/02	10,200	189
2002/03	32,100	380

[1] Formerly sections 13A and 13B of the Prevention of Terrorism (Temporary Provisions) Act 1989 and repealed under the Terrorism Act 2000 (which came into force on 19 February 2001)

1: It should be noted that the high figures in 1996-1998 are largely related to the conflict in Northern Ireland - after the Good Friday agreement in 1998 the numbers drop sharply; 2: There has been a significant rise from the figure of 6,400 for the year up to March 2001 to the recorded figure of 32,100 for the year up to March 2003; 3: The number of those arrested in 2002/3, 380, was 1.18% of those stopped and searched; 4: As the Home Office admits "the majority" of arrests had no connection with terrorism - nor are any figures given for the number of those arrested who are subsequently charged with an offence or those charged who are acquitted; 5: Overall 31,720 searches were carried out where people were innocent of any offence; 6: The Note in the Home Office Statistical report says:

The table above shows the number of stops and searches in order to prevent acts of terrorism from 1995 (from 1 April) to 2002/03 together with the number of arrests resulting, the majority of which were not in connection with terrorism. In 2002/03 there were 32,100 searches, 21,900 more than in 2001/02 and the highest number recorded since 1996/97. The Metropolitan and City of London police areas saw an increase of 19,400 and 1,100 stop and searches respectively. The increase in the Greater London area was due to an increase in general security throughout the year following September 11 (2001)... Twenty-one forces carried out stop and searches to prevent acts of terrorism in 2002/03." (emphasis added)

Only 21 police forces, out of a total of 43 in England and Wales, used powers under the Terrorism Act 2000 to stop and search vehicles and pedestrians. The largest number of stops and searches of pedestrians and vehicles and resultant arrests - for just eight forces (31,357 stops, 339 arrests) were:

Police force	Stops and searches	Arrests
Metropolitan Police	23,441	199 (0.85%)
City of London	4,644	107 (2.3%)
Thames Valley	900	- (0.0%)
Gloucestershire	898	3 (0.27%)
Cheshire	320	7 (2.1%)
Greater Manchester	509	12 (2.35%)
Hampshire	294	8 (2.35%)
Sussex	351	3 (0.85%)

What is strange about these figures is not that only 21 out of 43 forces used stop and search powers under the Terrorism Act 2000 but rather that those that did not resort to this power (or used it rarely) included major forces where raids are known to have occurred. For example, in Hertfordshire, Merseyside and West Midlands where the figures might have been expected to be high the Terrorism Act 2000 was only used once over the whole year.

This anomaly led us to examine other figures, those for "Searches of persons or vehicles under Section 60 of the Criminal Justice and Public Order Act 1994" under which stop and search powers are available where there is an "anticipation of violence" and where there seemed to be a very large unexplained rise between the year 2000/01 (ending in March 2001) and the latest figures for 2002/03.

Searches of persons or vehicles under section 60 of the Criminal Justice and Public Order Act 1994 and resultant arrests - England and Wales

Year	Searches	Weapons found	Arrest/weapons	Arrest/other reasons
1995 (from 10.4.95)	2,380	205	58	109
1996	7,020	187	32	371
1996/97	7,970	177	129	392
1997/98	7,970	377	103	332
1998/99	5,500	213	91	84
1999/00	6,840	59	36	195
2000/01	11,330	357	309	411
2001/02	18,900	1,367	203	485
2002/03	50,820	2,193	43	2,823

There has been a clear and dramatic rise in the use of this power to stop and search under the 1994 Act since April 2001.

A comparison for a number of forces between their use of this power in the years 2000/01 and 2002/03 is illuminating:

Number of searches carried out under the 1994 & 2000 Acts:

	1994 Act: 00/01	1994: 02/03	2000 Act
West Midlands	4,718	19,036	36
Greater Manchester	1,910	7,878	509
Hertfordshire	137	6,424	-
Lancashire	74	1,573	155
Merseyside	178	1,320	-
Wiltshire	10	1,211	-
South Yorkshire	-	899	105

[NB: the use by the London Metropolitan Police of this power rose from 2,813 to 8,606]

From these figures it can be reasonably concluded that some police forces are recording "anti-terrorist" stops and searches of pedestrians and vehicles using the 1994 Act rather than the Terrorism Act 2000.

Taking the year 2000/01 as the pre-11 September base it would appear that some 39,000 stops and searches under the 1994 Act are attributable to anti-terrorism - a figure which is well in excess of the officially recorded use of the Terrorism Act 2000 which is 32,100.

What are the real figures for anti-terrorism stop and searches?

On the basis of the above figures it is possible to estimate the true number of stop and searches carried out as part of the "war on terrorism" for the year 2002/03 (see chart).

Overall it can be concluded that:

1. The true figure for the number of stop and searches for 2002/03 for anti-terrorist purposes was more than doubled the

official figures, 71,100 not 32,100.

2. The percentage of arrests resulting from stop and searches under the Terrorism Act 2000 was only 1.18% which compares unfavourably with 13% for stop and searches under the Police and Criminal Evidence Act 1984 (895,300 people were stopped and searched of whom 114,300 were arrested).

3. Nearly 70,000 people were stopped and searched who had committed no offence.

4. The low arrest rate and the large number of people stopped and searched suggests that these powers are being widely used to little effect.

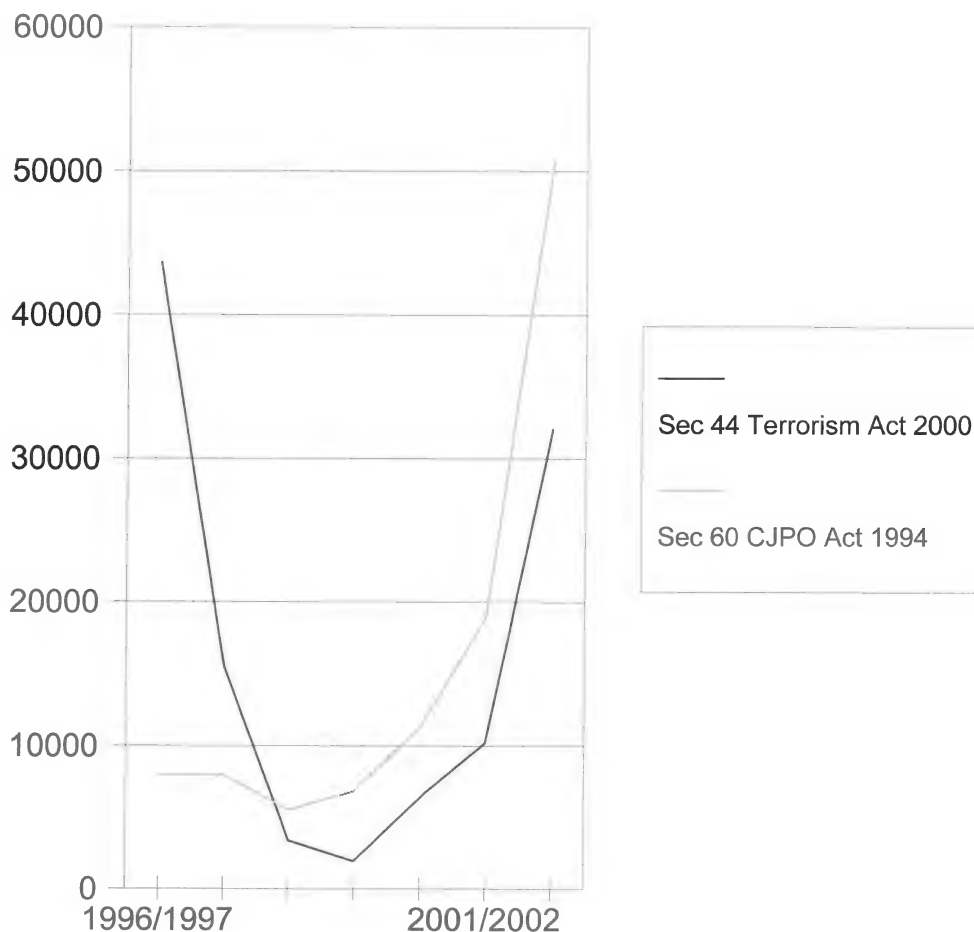
5. The numbers being stopped and searched now exceeds the previous high point in 1996 and 1997 which preceded the "Good Friday agreement" in Northern Ireland in 1998.

Searches of pedestrians, vehicles and occupants under sections 44(1) and 44(2) of the Terrorism Act 2000 and Section 60 of the Criminal Justice and Public Order Act 1994 and resultant arrests for England and Wales (April 2002-March 2003):

Year	Total searches	Resultant arrests
Terrorism Act	32,100	380
CJPO Act	39,000	-

Note: A rough arrest figure under the CJPO Act 1994 could be arrived at by deducting the 2000/01 figures from the 2002/03 ones which would give 2,103 arrests - the great majority of which would have nothing to do with terrorism.

Source: Arrests for Notifiable Offences and the Operation of Certain Police Powers under PACE England and Wales, 2002/03, 12.12.03.



EU law on asylum procedures: An assault on human rights?

EU is to encourage member states to remove more social and legal rights from refugees and asylum-seekers

The Council has failed to meet the deadline of December 2003 set by EU leaders for agreement on a proposed Directive on asylum procedures. This Directive, along with a parallel proposal on the definition of 'refugee' and subsidiary protection status (on which the Council has also missed the deadline), is at the heart of refugee law. However, there have been disturbing developments in the final months of negotiations on the Directive. It appears that the Council is likely to agree a Directive which in many respects will fall below the minimum standards set by human rights law, with Member States not merely permitted and encouraged to lower their existing standards but in one area even required to lower those standards.

Background

At the moment, asylum procedures are only governed by EU 'soft law', comprising the three 'London Resolutions' of EU Ministers adopted in 1992 (on 'safe third countries', 'safe countries of origin' and 'manifestly unfounded' cases) and a Council Resolution setting out general rules on asylum procedures adopted in 1995. The Commission proposed a Directive on this subject in September 2000. A year later, the proposal fell victim to the Belgian Council Presidency's cancellation of negotiations over most EC immigration and asylum proposals, and the Council instead agreed 'conclusions' on this issue in December 2001. These conclusions took no account of the proposed amendments of the European Parliament, which would have considerably improved the Commission's proposal. Furthermore, the EU summit in Laeken, in December 2001, called for the Commission to present a new version of the proposal.

The Commission presented its revised proposal, considerably lowering the standards in its first proposal, in June 2002, although the Council did not reopen negotiations on it until January 2003. In June 2003, the JHA Council agreed on part of the Directive, concerning the standards applicable when an asylum-seeker first comes into contact with the authorities. These rules cover issues such as detention of asylum-seekers, the right to legal aid and access to a lawyer, and the right to a personal interview with a trained official. The rules agreed by the Council in these areas fell well below the standards proposed by the Commission. In any event, late in 2003, several Member States reopened the deal already reached on these Articles, in particular seeking to lower standards still further as regards legal aid for asylum-seekers and asylum-seekers' right to a personal interview with officials before their claim is determined.

In the meantime, the Council has been negotiating the other provisions of the Directive, concerning 'inadmissible' asylum applications, the scope of special procedures applicable to admissible applications, the rules applicable to withdrawal of refugee status, and the right of asylum-seekers to have access to a court or tribunal, including the question of whether a legal challenge has 'suspensive effect', meaning that the asylum-seeker is entitled to stay in the country pending the decision.

Inadmissible applications

If an asylum application is inadmissible, the national authorities do not have to consider its merits at all. So even though the situation of the asylum-seeker in the country of origin may be appalling, with the result that his or her case for refugee status may be well-founded, the authorities will not even examine the application. 'Inadmissible' cases concern those cases where it is believed that the asylum-seeker should have applied somewhere else, or where the asylum-seeker already has protection somewhere else.

The proposed Directive applies this principle to cases where a person already has protection elsewhere or is subject to the EU's 'Dublin' rules allocating responsibility to a single EU Member State for considering asylum applications. More controversially, it allows applications from 'safe third countries' to be considered inadmissible. The latest Council draft removes almost all of the detailed safeguards in the Commission's proposal as regards the human rights and refugee law standards which countries must uphold to be considered 'safe'. It also apparently extends the principle to states which the applicant has not even travelled through. Moreover there is no longer a clear obligation to consider the application of the principle to each individual applicant. This approach would leave Member States free to remove asylum-seekers to any country willing to accept them, potentially even to a country with a suspect human rights record, without any consideration of the merits of their claims or even any detailed consideration of the application of the 'safe third country' principle to the facts of their case. Moreover, there would be a special, exceptionally low, standard of procedural protection for certain cases where an asylum-seeker has supposedly come from a safe country neighbouring the EU.

Special procedures

One of the most important special procedures for admissible asylum applications is the application of the 'safe country of origin' principle. This means that the application is presumed to be unfounded because the applicant is the citizen of a country where human rights are so well protected that persecution of individuals severe enough to cause them to flee the country never happens. This principle might be uncontroversial if its application was limited to (say) Canada and Norway, but in practice countries which apply this principle consider that some states with very questionable human rights records are 'safe countries of origin'.

The Commission proposed that Member States could apply this principle as an option in their asylum law, subject to certain safeguards. However, the JHA Council of October 2003 agreed that Member States would be required to apply this principle in their national law, at least for a common list of countries that would be deemed to be safe by all EU Member States. The common list is to be adopted by the Council by a qualified majority vote; the European Parliament will only be consulted and national parliaments will have no input at all. Member States will still be free to add additional countries to any national list of 'safe' third countries, but will not have the power by themselves to take any states off the EU list permanently, even if this change were limited to the Member State in question and no matter what the human rights situation in the supposedly 'safe' States. The principle will even apply to States where a person was formerly resident, regardless of whether that person was a citizen of that State or was stateless; this broadens the traditional application of the principle.

Many Member States do not currently have a list of 'safe countries of origin'. So for the first time, EU Member States will actually be required by the EU to lower their standards in the field of asylum law. This development follows on from a call to develop such a list in June 2003 from the 'G5', a new secret grouping of interior ministry civil servants of the five largest Member States, which has begun holding wholly unaccountable meetings to control the development of EU Justice and Home Affairs law. Since the EU is at present limited to setting only 'minimum standards' for asylum procedures, it is highly questionable whether this power can be used to set minimum standards for restriction of individuals, rather than minimum

standards for protection.

Other special rules for admissible applications concern the idea of 'accelerated' proceedings for supposedly 'unfounded' cases, including those covered by the 'safe country of origin' principle. The latest draft of the Directive lists no fewer than fifteen cases where Member States could apply this principle—but this is a non-exhaustive list. Member States are also permitted to apply special rules, lower than the standards normally applicable to examination of applications, where a person applies for asylum at the border or where the application is a repeat application. The Council has lowered the standards proposed by the Commission in all these areas.

Cancellation of refugee status

Even if a person in need of protection surmounts the obstacles placed in his or her way by national and EC law and obtains refugee status, the planned Directive will make it easy to take that status away. There will be simplified procedures for withdrawing status and in particular, Member States will be free to deny any procedural protection if they claim that refugee status has 'ceased' because of a change of circumstances in the country of origin.

Access to a court

The Council's latest draft still permits access to a court or tribunal, but no longer sets any standard for extent of the judiciary's powers to review the decision of the national authorities. Also, the Council's latest draft weakens the already low standards in the Commission proposal regarding whether appeals have 'suspensive effect'. Now Member States will apparently be free in any and all cases to deny applicants the right to stay in the country pending decisions on their appeals. The impact of this is that even if asylum-seekers win their cases on appeal—and increasing numbers win their appeals to the courts in some Member States—this victory will be virtually useless to them if they are already back in the unsafe country which they fled, or in another State which might send them back

to that unsafe country.

Conclusion

The European Court of Human Rights has repeatedly ruled against Member States with low levels of procedural protection for asylum seekers, requiring an effective examination of a claim that expulsion of a person would result in torture or other inhuman or degrading treatment and limiting the ability of Member States to expel a person in the meantime. However, it seems that this case law, and similar rulings by the Committee which monitors application of the UN Convention Against Torture, has been wholly ignored by the Council in the final months of negotiations on this proposed Directive. Moreover, with its decision to require Member States to lower their standards as regards asylum law, the JHA Council has crossed the Rubicon. The Council is no longer solely setting minimum standards for protection, which already runs the risk of a competitive 'race to the bottom' by Member States reducing levels of protection in order to deter claims. Now it is at least partly in the business of forcing them to lower standards, setting a low ceiling for protection rather than a low floor.

This article is an updated version of the analysis that appeared on Statewatch News online in October 2003.

Revised Commission proposal on minimum standards for asylum procedures (COM (2002) 326, 18 June 2002); Council docs. 10235/03, 10.6.03, outcome of proceedings of JHA Council, 5/6.6.03 on Articles 1-22 of proposal; 10235/03 add 1, 10.6.03, addendum to outcome of proceedings of JHA Council, 5/6.6.03 on issue of 'safe countries of origin'; 12639/03, 18.9.03, note to SCIFA/Coreper on issue of 'safe countries of origin'; 12815/03, 23.9.03, note to Coreper on issue of 'safe countries of origin'; 12888/03, 25.9.03, note to Coreper/JHA Council on issue of 'safe countries of origin'; 12888/1/03, 30.9.03, note to JHA Council on issue of 'safe countries of origin'; 12734/1/03, 3.10.03, outcome of proceedings of working party on 16/17.9.03 and JHA Council, 2.10.03; 13901/03, 25.10.02, note from Presidency to SCIFA; 14102/03, 4.11.03, note to JHA Council on 6.11.03 regarding 'safe third countries' and border procedures; 15153/2/03, 26.11.03, note from Presidency to JHA Council; 15198/03, 4.12.03, outcome of proceedings of asylum working party on 2 and 3 Dec. 2003.

UK

The dismantling of asylum

The Asylum and Immigration (Treatment of Claimants, etc.) Bill passed its second reading on 17 December, scathed only by a small but passionate rebellion of 28 Labour back-benchers (of a total of 78 who voted against). The Bill, which is expected to be law within six months, will result in profound changes in the legal and constitutional landscape of Britain as well as stripping asylum seekers of further legal and social rights. The Home Affairs Select Committee, reporting on the Bill on 9 December, joined a large number of concerned groups and individuals, including the Immigration Lawyers Practitioners' Association (ILPA), JUSTICE, the Law Society and London mayor Ken Livingstone in expressing serious concerns about its provisions. The Committee also objected to the haste with which the Bill was being rushed through, complaining that it 'has been introduced with insufficient advance information to enable proper consultation or prior parliamentary scrutiny of the principles involved.' To add insult to injury, the Commons was given only six hours to debate it on second reading.

The Bill – Labour's third on asylum since 1997 – further criminalises asylum seekers by creating offences for those arriving with no documents or refusing to co-operate with removal; introduces electronic tagging for asylum seekers; gives immigration officers more arrest, search and seizure powers;

withdraws all asylum support from families who don't leave 'voluntarily' when their asylum appeal is dismissed; extends the definition of 'safe countries' and removes appeal rights – the provision of the least interest to the press, and of the most concern to organisations representing asylum claimants.

Penalising undocumented asylum seekers

Clause 2 of the Bill makes it a criminal offence to arrive undocumented. A non-EEA national who is unable, without reasonable excuse, to show a valid passport or other travel document to an immigration officer on arrival, for him- or herself or for dependent children, may face up to two years' imprisonment (six months in the magistrates' court), and an unlimited fine.

Very few asylum seekers have their own passports – in fact, possession of one's own passport is taken by immigration officers to mean that the holder is not a genuine refugee, since (they argue) the authorities of a persecuting country are unlikely to issue their opponents with the means of escape. Agents bringing asylum seekers to the UK generally provide them with false travel documents which they need to board the aircraft, ferry or train bringing them here, and tell their charges to destroy or dispose of them (to cover the agents' tracks). But under the

Bill, being instructed by an agent to destroy or dispose of travel documents is not a 'reasonable excuse'.

JUSTICE and the Law Society expressed concern that the proposals will contravene the UN Refugee Convention. Article 31 of the Convention, recognising the difficulties genuine refugees are likely to face in reaching safe countries, bans the imposition of penalties on refugees who enter the country illegally, provided they claim asylum promptly and 'show good cause' for their illegal entry. In 1999, the High Court denounced the immigration, police and prosecuting authorities for their contravention of Article 31, and the government was forced to pay compensation to hundreds of asylum seekers who had been sent to prison for terms of six to nine months for entering the UK on false documents. In response to the High Court criticism, the government enacted legislation which provided a defence to the charge of possession of false documents. Now, that experience seems to be forgotten in the rush to deter yet further asylum seekers.

Beverley Hughes, the renamed Minister of State for Citizenship, Immigration and Counter-Terrorism, says the principal purpose of Clause 2 is to "break the hold of the criminal facilitators". She told the Home Affairs Committee that the position of genuine refugees would not be made worse by the measures. But in its preliminary report on 9 December, the Committee expressed concern that 'despite the Minister's assurances, genuine refugees who through necessity travel on false documents and who use the services of illegal facilitators may be convicted under this proposed legislation'. (The Committee's preference is for greater surveillance of passengers leaving aircraft, which would enable immigration officers to return asylum claimants to the countries from which they embarked.)

Clause 14 of the Bill also makes it a criminal offence to fail without reasonable excuse to comply with a broad range of demands which the Secretary of State might make to obtain documentation for someone's removal, including provision of fingerprints or other biometric data, making an application to the embassy of the person's country, attending interviews and asking questions and filling in forms 'accurately and completely'. Failing to tick a box on a form, or failing to provide fingerprints, might result in two years imprisonment.

Those representing asylum claimants point out that the Home Office expects them to provide detailed information to the embassy of the country they have fled from, which could put themselves or their families at risk by identifying them as asylum claimants. In some countries, the act of claiming asylum abroad is seen as treasonable in itself.

Arrest powers

Immigration officers are to have more powers of arrest without warrant, search and seizure on reasonable suspicion of offences including fraud, conspiracy, bigamy, perjury, obtaining by deception, theft, handling stolen goods and giving false information to a registrar. Thus if, in the course of an immigration interview the immigration officer forms a suspicion that any of the offences has been committed, he or she may arrest the interviewee, subject him or her to a search, enter his or her home and search it, and seize documents and other relevant items there. This raises the alarming prospect of an immigration officer interrupting an interview of someone seeking to remain as the spouse of a British citizen to arrest the couple and search their bedroom on suspicion of fraud, bigamy etc.

Withdrawal of support – cheaper than deportation

The provisions which have attracted the most media, public and parliamentary attention are those depriving failed asylum seeking families of all support if they don't leave the country 'voluntarily'. Previously, only childless asylum seekers were

subject to this regime, while families lost support only if they failed to attend for compulsory removal.

The Home Office minister candidly admitted to the Home Affairs Committee that 'the Government does not currently seek the compulsory removal of all families illegally present in the UK because of the expense and difficulty of this option'. Families with children have until now been eligible for basic NASS support until they are removed (or fail to attend for removal). The Home Office frequently does nothing to remove them for months, sometimes years after they have lost their appeal. In some cases, countries of origin are simply not safe enough to send failed asylum seekers home. During the second reading debate, the minister did not explain what was to happen to nationals from these countries, including Zimbabwe, Sierra Leone and Iraq, which are the subject of Home Office non-removal policies. Nationals of other countries, such as Afghanistan, are currently offered the option of voluntary return. Now, the government plans to starve families out, saving the costs of enforcement action to remove them.

As Mayor of London Ken Livingstone said, the proposal weakens the integrity of voluntary return programmes 'by using them as surrogate forms of coercive removal'. Local authorities will not be allowed to support whole families, only children, who will be taken into separate accommodation if they remain in the country without support.

The inhumanity of forcing parents to give up their children has been underlined by the Home Affairs Committee and the new Tory leader Michael Howard, for whom, however, the answer is speedier deportation of whole families. Livingstone, and groups working with asylum seekers, believe that the provisions will force families underground to prevent children being taken into care, leading to a swelling underclass of people working as sweated labour in inhuman conditions for virtually nothing, unable to obtain health care or send their children to school on pain of discovery and separation.

Abolishing judicial interference

The replacement of the two-tier immigration and asylum appellate authority by a one-tier system had been announced and expected. In relation to that part of the Bill, the Home Affairs Committee pointed out the 'considerable evidence' it had received that the quality of initial decision-making on asylum claims 'is poorer than it should be', including a rise in the proportion of appeals which are successful, from one in 25 in 1994 to one in five in 2002, and recommended that 'the implementation of the new asylum appeals system should be contingent on a significant improvement in initial decision making having been demonstrated'.

The sub-clause which is causing most alarm goes much further, abolishing rights of appeal and review from the Tribunal to the High Court, the Court of Appeal and the House of Lords. The 'ouster' clause proclaims, in true Henry VIII fashion, that 'no court may entertain proceedings for questioning' the Tribunal's decisions, which are to be final; nor can there be any judicial review of Home Office implementation of removal following the appeal. In the second reading debate, Neil Gerrard MP quoted prime minister Tony Blair's words back at him: 'It is a novel, bizarre and misguided principle of the legal system that if the exercise of legal rights is causing administrative inconvenience, the solution is to remove the right.' [1]

Organisations working with immigrants and asylum claimants believe the clause breaches article 13 of the European Convention on Human Rights, which requires states to provide effective remedies against potential breaches of Convention rights. Many immigration and asylum decisions are about the impact of expulsion on rights protected by the Human Rights Convention, including the right not to be exposed (through expulsion) to a real risk of torture or inhuman or degrading

treatment, and rights to family life. The Court of Appeal has frequently spoken about the high constitutional importance of access to the courts, and senior judges are likely to oppose the attempt to deprive them of their supervisory role, particularly in asylum cases where the consequence of getting it wrong can be fatal.

The deprivation of access to the higher courts needs to be seen in the context of the proposals to remove legal aid from asylum claimants and to reduce it in asylum and immigration appeals. On the one hand, asylum seekers are told that they will only be given one chance to persuade a legal body of the merits of their claim. On the other hand, under other palms on legal aid they are to be deprived of the legal help required to do it. Add into the picture the fact that most asylum seekers don't speak English and are unfamiliar with the procedure; that many are suffering from physical and psychological effects of their experiences, that many are dispersed to parts of the country where legal expertise is sparse and where they face hostility and

marginalisation, while others receive no support at all and are supposed to prepare and present their claims while homeless and with no means of support, and the impact of this measure on those whom it will affect begins to come into focus.

It will be hard to monitor the effect of the denial of access to the higher courts, since those who formerly benefited from the protection of those courts will have become invisible – whether by removal from the country or by disappearing into its grim underworld. But it appears to enshrine into law the concept that those who are not citizens of this country are entitled only to a curtailed and second-class justice system, thus undermining the universality of the human rights protection which was hitherto recognised as the birthright of every human being. As Diane Abbott MP put it, 'If we can get away with removing proper appeals and proper legal redress from asylum seekers, what other group that is not popular with the Daily Mail will we move on tomorrow and the day after?'

[1] *Official Report*, 2 November 1992; Vol. 213, c. 43.

NORWAY-NETHERLANDS

Krekar case poses more questions than answers

On 12 September 2002, the Dutch authorities arrested Mullah Krekar at Schiphol airport on the grounds that he posed a threat to national security. His flight from Iran to Norway stopped over in Amsterdam.

The "suspect"

Mullah Krekar, an Iraqi Kurd, has been living as a political refugee in Norway since 1991 (and has a Norwegian passport). He is accused of participating in terrorist activities, although the nature of the charges remain unclear and the evidence has proven insufficient for successful prosecution. Mullah Krekar, or Farai Ahmad Najmuddin, is one of the founders of the Islamic organisation *Ansar al-Islam* (originally *Jund al-Islam* - Soldiers of Islam). He was born in the Iraqi province of Al-Sulaymaniyah, studied Islamic Law in Pakistan and allegedly followed the teachings of Abdullah Azzam, who was also the mentor of Osama bin Laden. In Pakistan, Krekar became involved in the Afghan resistance movement and went to fight against the Russians in Chechnya. He was cited saying that Osama Bin Laden was the crown of Islam. *Ansar al-Islam* operated in the north of Iraq and is named in relation to attacks on Kurdish politicians and holds the reins of a religious government in some villages in the north of Iraq.

According to the United States, *Ansar al-Islam* fighters give shelter to high ranking al-Qaida members and have experimented with chemical weapons. Just before the US and UK-led attack on Iraq, the United States saw *Ansar al-Islam* as a threat to Kurdish parties in Northern Iraq. In February 2003, *Ansar al-Islam* was added to the United Nations list of terrorist organisations.

Ansar al-Islam called for a holy war in the region, but it is unclear if Krekar supported this position. Some sources say he supported the radical fractions, others say that he was more of a compromise figure in the organisation. According to Michiel Leezenberg (lecturer in Islamic Philosophy at the University of Amsterdam) Krekar was a preacher and not a military leader and he argues there is little proof for the accusations about his presumed participation in terrorist activities.

When Krekar was arrested at Schiphol airport in September 2002, the Dutch authorities claimed the arrest took place on grounds of a drugs related extradition request by Jordan. However, the events that followed revealed that the US suspected Krekar of "terrorist activities" as well as relations with al-Qaida and Saddam Hussein, although he does not appear on the FBI's 'most wanted' list. On the day of Krekar's arrest, a

Dutch Ministry of Justice spokesman claimed that it was related to immigration offences and that "several countries" were discussing his case with the Dutch secret service (which, it was later revealed, provided the "evidence" for this case).

The events leading up to the arrest

Krekar was put under house arrest in Norway at the end of August 2002 because of alleged recruitment activities for a cell of *Ansar al-Islam* in Norway. Preliminary investigations were initiated against him on grounds of terrorism and abuse of his asylum status. In face of prosecution in Norway, Krekar left the country for Sweden, but Sweden told him to leave so Krekar took a flight to Iran to travel on to northern Iraq. The Iranian authorities arrested and imprisoned him in Teheran, despite that fact that he was neither convicted of any crimes, nor had he encountered problems with Iranian authorities in the past. Iran used to support *Ansar Al-Islam*, but according to the *Economist*, the Iranian secret services have increased their cooperation with 'Western' (American) intelligence agencies.

The events that followed imply at least some form of cooperation between the different governments involved, albeit a confusing one:

On 12 September 2002

- the Iranian authorities expel Krekar back to Norway via Amsterdam where he is arrested and imprisoned at the high security prison of Vught.

- Norway notifies the Dutch Embassy in Teheran of Krekar's presumed terrorist activities,

- the military police at Schiphol airport is notified by the Dutch Embassy in Teheran that Krekar is flying into Amsterdam with *Iran Air* on flight 765 and tell Dutch police that the Norwegian authorities have revoked Krekar's asylum status.

- Jordan files an extradition request with the Dutch department of Interpol, upon which Interpol orders his arrest. The original extradition order reads: "criminal conspiracy to commit crimes against individuals". One day later, the extradition request is changed to be only drugs related, presumably to give a legal basis to the extradition (see below).

On 13 September 2002

- the Norwegian Ambassador to Holland visits Krekar at Schiphol airport, where he tells the military police that Krekar still has a legal status in Norway. After the Ambassador's visit,

the military police book a flight for Krekar from Amsterdam to Oslo for Saturday 14 September 2002. The same day, whilst imprisoned in Vught high security prison, Krekar is interrogated by FBI personnel from both, the American Embassy in Brussels and the FBI offices in Washington.

- Krekar remains imprisoned in Vught awaiting trial for Jordan's extradition request, now changed to charges of drugs trafficking.

Although Jordan changed its extradition order for Krekar to drugs related crimes, a letter from the Dutch secret services to the Dutch Ministry of Justice was leaked to the public in January 2003 and it became clear that Jordan was also looking for Krekar in relation to a bomb attack on the chief of the Jordanian secret service Department for Counter Terrorism on 28 February 2002. This information however, was not given to the judges or the defence team, who were led to believe that the extradition request was based entirely on drug related crimes. As Holland does not have an extradition treaty with Jordan, so only people suspected of drugs related crimes can theoretically be extradited because both countries signed the 1988 United Nations Convention Against Illicit Traffic In Narcotic Drugs and Psychotropic Substances, which allows for people to be extradited in relation to drugs crimes. But in Holland, no extraditions under this Convention have taken place and nor have any extraditions to Jordan taken place because of concerns over human rights abuses.

"Suspect" deported during proceedings - lawyers arrested

Throughout the proceedings, Krekar's defence lawyer V. Koppe suspected other motives were behind the arrest. On 28 November 2002, in a letter to the Ministry of Justice, he demanded to be informed about the precise nature of the extradition request. JPH Donner, Minister of Justice, replied there were no charges other than the drugs related ones, but the lawyers initiated proceedings against the minister to clarify if J P H Donner had misled the courts. On 9 January, the judges ruled that the extradition dossier did not support the lawyer's suspicions. This gave the green light for the extradition proceedings against Krekar to start on 25 January at the court in Haarlem. However, on 12 January, before the trial had started, J P H Donner personally issued an order for Krekar to be deported to Norway and claimed there was an agreement that Krekar would be arrested on arrival. The Dutch Ministry of Justice issued a press release on 14 January saying that, confronted with the probability that the extradition request would not be granted (by that time it became clear that there was no evidence supporting the Jordanian claims of drugs trafficking) and that Krekar would therefore be released from detention. The Ministry had decided they would deport him to Norway, where the authorities had promised to arrest him on arrival. The Norwegian authorities would later deny that there had ever been such a deal. In effect, the Dutch Ministry of Justice decided Krekar's fate (prison and deportation) without any convictions against him and based on accusations of "terrorist activities" for which there remains no evidence.

Krekar's lawyer was not told of the deportation order but went straight to the airport when he heard about it. There he joined Krekar in a police van. Together they challenged the deportation order and lodged an asylum claim with the Dutch authorities on grounds of likely prosecution in Norway and consequent extradition to northern Iraq. His asylum request was rejected within 20 minutes and without proper proceedings being followed. The police ordered Koppe, the lawyer, to leave the van as they were about to drive Krekar to the plane (a private Lear jet aircraft used for deportations). Koppe refused and was then arrested together with his colleague, M. Strooij. Krekar's lawyer said that his client's deportation was a disguised extradition.

"Holland cannot deport someone to a country where a criminal investigation is going on and where his residence status might be taken from him", he said. Krekar was flown to Norway.

On 25 January 2003, the extradition case against Krekar fell because he was not there to be extradited. Krekar's lawyers appealed to the Court of Justice in Amsterdam against the deportation and the rejection of Krekar's asylum request. This hearing went ahead, considering Krekar's deportation and right to return to Holland, as well as the irregularities surrounding the Dutch Minister's handling of the case - including his failure to notify the prosecution about the deportation he ordered. The "real" reason behind the extradition request became known when a letter, dated from 13 September 2002, from the Dutch Intelligence Service (AIVD) to the Minister of Justice, was leaked to the public on 18 January 2003. A bomb attack on the chief of the Jordanian secret service Department for Counter Terrorism on 28 February 2002, during which two by-standers were killed, was cited. This information was neither presented to the Court of Justice in Haarlem, which dealt with the extradition request, nor to Krekar's lawyers. If the Court of Justice had known about it Krekar would have been released immediately because it would have rendered the 1988 UN Convention on Drugs redundant as a legal basis for extradition, and there is no other legal basis in Holland for extraditions to Jordan. The full extent of the Dutch ministers collusion in the case as well as the involvement of the secret services was thereby revealed (evidence from the secret services is not admissible in court).

Justice minister intervenes

The Minister's handling of the case, the deportation and the withholding of evidence, has received widespread criticism in the media. It is argued he perverted the course of justice and commentators accuse him of hypocrisy. In particular recalling his behaviour during another 'terrorist' trial where the court released four al-Qaida suspects because the evidence against them was provided by the Dutch secret service - the Minister called for a change in law to allow for secret service evidence to be allowed in court for criminal prosecutions. However, in Krekar's case, he withheld this evidence. Ironically, Krekar's lawyers agree with Donner that in this case, the AIVD (Dutch Intelligence Service) evidence should have been given to the court to consider, because it would have shed light on the treatment that would have awaited their client in Jordan. They argue that as this was not a criminal prosecution, the evidence would have only served to provide a basis for the judges to be able to make an informed decision on extradition.

Why was Krekar arrested?

A number of motives are thought to lie behind the initial arrest of Krekar.

More questions have arisen than have been answered: How did Jordan know that Krekar was in Holland and why did Norway notify the Dutch authorities, presumably asking for him to be arrested? Why did the Dutch Embassy in Teheran falsely claim that Krekar's legal status in Norway was revoked? Did Jordan's extradition request on the basis of drugs crimes relate to the lack of a legal basis for the extradition as well as suiting Holland's attempts to prove to the "international community" that it is not 'weak' on drugs policy? Anonymous sources from within the Dutch Ministry of Justice say that it is peculiar that an extradition order from Jordan is considered at all by the Ministry of Justice. Holland has never extradited people to Jordan because of their "lack of trust in the Jordanian legal system".

The U.S. involvement

It was reported that Donner had consulted the U.S. authorities before Krekar was arrested and before he issued the deportation order. Although the US never filed an extradition request they

were named as partners in the proceedings. The lack of an official extradition request caused speculation that they did not have enough evidence. Krekar touched on other reasons when he commented on Norwegian television after his deportation from Holland that he has worked with the CIA. FBI officers interviewed him in prison in Holland because of a Jordanian extradition request seeming to confirm J P H Donner's claim that the United States showed a lot of interest in Krekar. One of the federal officers working for the Department of Justice in Washington, who also interrogated Krekar in Vught, acknowledged that the US did not have any proof of possible terrorist activities involving Mullah Krekar. After Krekar's deportation to Norway Washington also claimed that they were not looking for him in relation to criminal activities.

According to Krekar, during his interrogation in Vught, the FBI asked him about Osama Bin Laden and Saddam Hussein and were mainly interested in any possible contacts between the two. Krekar also claimed that the US put pressure on him because he and his group refused to cooperate with them in the planned attack on Iraq.

Political afterpains

When Krekar arrived at Oslo's airport on 13 January 2003, there were no police waiting for him but a lot of journalists - as he had acquired public status in Norway after being accused of terrorist activities and links to al-Qaida. The Norwegian authorities denied that there was any deal with the Dutch authorities. The Norwegian Ambassador said in the press that Norway had time and again made clear that there would be no arrest.

In a debate in the Dutch parliament the Minister of Justice had to admit that there had been no guarantee that Norway would arrest Krekar on arrival in Oslo. Lasse Qvigstad, head of the Oslo Prosecution Authority, prevented his arrest as there was no evidence of criminal conduct. Qvigstad has apparently prevented charges against Krekar for some time now while the Norwegian secret service unsuccessfully sought prosecutions.

According to Norwegian television, the United States started to panic when Krekar was not arrested in Norway and were considering an extradition order. U.S. Secretary of State, Colin Powell, talked with his Norwegian colleague Jan Petersen (Minister of Foreign Affairs) and Powell proclaimed that the US did not want people suspected of terrorist activities "going out and taking part in new actions".

In the Dutch hearing on Krekar's deportation and asylum request, the Court of Justice ruled on 1 February 2003 that the deportation of Krekar had been unlawful and that the asylum request which Mullah Krekar made together with his lawyers on the last moment at the airport was justified and should have been taken into account and not rejected within twenty minutes. In his decision, the judge queried why, after four months of imprisonment in a high security prison, Krekar and his lawyers had not been notified about the deportation as well as wondering why the Minister of Justice personally ordered the deportation and why the case had not followed the normal rules and regulations. However, the Judge ruled out the possibility of Krekar being returned to Holland because there was no reason to believe Norway was unsafe.

Back in Norway

On 19 February 2003, the Norwegian Minister of Interior Affairs (Local Governance) Erna Solberg decided to extradite Mullah Krekar to northern Iraq. The Minister said that Krekar was a threat to Norway's national security and that his refugee status should be revoked, even though a month earlier, the Norwegian public prosecutor saw no legal basis for his arrest. There was to be an investigation into the alleged abuse of the asylum system, according to the Norwegian authorities, Krekar had regularly visited northern Iraq after 1991. The Norwegian authorities also

continued proceedings against Krekar for alleged financing of guerrilla activities as well as the formation of a terrorist group. Krekar was charged with breaking § 104a in the Norwegian Penal Code, which covers organisations which threaten or disturb the security of the country.

Brynjar Meling, Krekar's lawyer in Norway, appealed against the decision to extradite him to northern Iraq and the Dutch lawyers launched another appeal against Krekar's deportation to Norway, claiming that Krekar's life was in danger if he was extradited and demanded his return to Holland. On 21 and 22 of February 2003, members of the Dutch Immigration and Naturalisation Service (IND) visited Krekar in Norway concerning his rejected asylum request. On 26 February, the appeal was sent to the Court of Justice in Amsterdam. On 9 April this year, the judge ruled that Mullah Krekar's asylum application was unlawfully rejected by the Dutch authorities and that the state was obliged to look at his substantive claim. The Ministry of Justice concluded from the ruling that Krekar would have to be allowed to return to Holland to process his application.

In Norway, Mullah Krekar is under investigation and Jordan has lodged an extradition requested on the same grounds that it did to Holland. On 15 March 2003, Krekar was told that he had to leave Norway within three weeks. The government revoked his asylum status. According to the Minister of Interior Affairs, Erna Solberg, there are reasons to believe that Krekar, as leader of *Ansar al-Islam*, has relations with al-Qaida. Erna Solberg claimed that Krekar's role as political, religious and military leader would attract terrorism to Norway. She also thought that his life would not be in danger in northern Iraq. However, during the USA-UK invasion of Iraq most of the members of *Ansar al-Islam* were killed.

On 19 March 2003 Krekar gave an interview to the Dutch news programme, *Netwerk*, in which he stated that he had his troops ready and that they were far more dangerous than Palestinian suicide bombers. On 20 March the war in Iraq started. The interview was partly reproduced by the Norwegian television and interpreted as breaking the terrorist statute § 147a in the Norwegian Penal Code. The Oslo Remand Court consequently ruled on 21 March 2003 that he be held for four weeks on remand to await trial. Krekar won his appeal to the Intermediate Court and therefore the Økokrim (police branch dealing with economic crimes) appealed to the Supreme Court, based on the Intermediate Court's legal interpretation of § 147a.

On 9 April 2003, the Norwegian Supreme Court overturned charges brought against him in an earlier judgement by the Oslo Remand Court. The Court said that there was still no evidence to convict Krekar of any terrorist offences.

As of June this year, the Ministry was still working on the extradition case. The Minister, Erna Solberg, told *Aftenposten* on 7 June that the Ministry was working on "putting the extradition decision into effect". A number of lawyers have argued against this, on the grounds that the Kurdistan Democratic Party is now in control of Northern Iraq, and that Iraq is not (yet) a state in its own right, so that extradition to Iraq would in effect be extradition to the US occupation force, and the US has the death penalty.

Extradition to Jordan has been set aside (the request was far too thin) and extradition to Iraq is an uphill case. It is predicted that Krekar will remain in Norway.

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